

# GOING PUBLIC—THE END OF THE RAINBOW FOR A SMALL BUSINESS?

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BEFORE THE  
SUBCOMMITTEE ON  
GOVERNMENT PROGRAMS AND OVERSIGHT  
OF THE  
COMMITTEE ON SMALL BUSINESS  
HOUSE OF REPRESENTATIVES  
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## GOING PUBLIC—THE END OF THE RAINBOW FOR A SMALL BUSINESS?

THURSDAY, OCTOBER 14, 1999

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON SMALL BUSINESS,  
SUBCOMMITTEE ON GOVERNMENT PROGRAMS AND OVERSIGHT,  
*Washington, DC.*

The subcommittee met, pursuant to call, at 10:00 a.m., in room 2361, Rayburn House Office Building, Hon. Roscoe Bartlett [chairman of the subcommittee] presiding.

Chairman BARTLETT. Let me call to order the Subcommittee for Government Programs and Oversight of the Small Business Committee.

I'm sorry that I was a few minutes late. C-SPAN just spent a half hour with us talking about this subject. That was much appreciated because the goal of our hearing today, the purpose is simply to provide information to small businesses concerning the process of going public.

And now, in addition to the information made available through this subcommittee hearing, we have the audience of C-SPAN who knows that we're holding the committee hearing and who now knows something about how to go about getting information for going public.

It's a pleasure to welcome you to this hearing of the Subcommittee on Government Programs and Oversight of the House Small Business Committee. I would especially like to thank those of you that have traveled some distance to participate in this hearing.

For many small businesses or a company that has begun as a small business, going public can be the end of the rainbow, the culmination of years of hard work and substantial monetary reward for the owners of the business.

Few entrepreneurs going into business have not dreamed of going public and being a company listed on a stock exchange. This incentive may well be a major factor in the formation of business enterprises and contribute to continued economic growth.

As a nation of opportunity, innovation and invention, business formation should be encouraged. A number of factors need to be considered by businesses considering whether to go public. It is anticipated that this hearing will provide some of the answers to these questions.

The panel of witnesses that are invited to this hearing were carefully selected for their recognized expertise in the process of listing and selling securities on a public exchange. Your testimony and the

testimony of the other panel members is a vital public service to businesses, both large and small, throughout this country.

The committee is hoping to have as broad a distribution of the testimony in electronic and hard copy form as is possible. Both public and private assistance is available to businesses considering going public. And it is hoped that the hearing will provide a public forum for communicating those sources of information to businesses.

The committee is always open to suggestions of ways how to improve or expand, where needed, federally funded information sources and assistance. The committee would also appreciate new legislative proposals.

The creation and expansion of small businesses are the fuel which has generated and is sustaining our current economic growth. America is the most prosperous nation in the world because our stock market encourages the creation of wealth by efficiently directing capital from individual investors to reward both the investors as well as the entrepreneurs, inventors and innovators who produce and distribute new and better products and services to meet people's needs.

Again, welcome to our participants and guests. I look forward to hearing your testimony on this most important subject.

And I'd like also to welcome here on the dais my good friend Duke Cunningham from California. And one of our witnesses is in his district and we'd like to give him the opportunity now of introducing this witness.

Mr. CUNNINGHAM. Thank you, Chairman Bartlett and Ranking Member Davis. I want to thank you for the opportunity to introduce Mark Dankberg.

Mark is the Chief Executive Officer of ViaSat headquartered in Carlsbad, which is right in the heart of my district, the North County of San Diego. ViaSat's is a high tech company specializing in ultra high frequency communications for satellite.

Before this hearing I was talking to Mark. He went to Rice University and graduated in electrical engineering. But even more important, he started ViaSat in 1986 in a spare bedroom in his house. The number of his employees quickly rose. Ten years later, he took it public, which this hearing is about.

But by then, he had created almost 400 jobs and ViaSat had annual sales of more than \$70 million. Today ViaSat continues to be one of our community's leading companies and annually generates more than \$72 million dollars in revenue and has a strong workforce.

Besides his work at ViaSat, Mark is an active member of our San Diego community. He serves on the Board of Directors for San Diego Telecom Council and is a member of the San Diego County Council Regional Economic Task Force. He also is on the Board of Directors at REMEC, a publicly traded manufacturer of microwave products in San Diego, and Connected Systems, a privately held high tech firm in Santa Barbara.

Mark's a winner, a successful businessman. And I'm excited to meet John Wall, who I just met here this morning, of NASDAQ.

But I thank you for the opportunity to introduce Mark Dankberg and listen to his testimony, Mr. Chairman.

Chairman BARTLETT. Thank you very much. Let me now recognize Congressman Davis for his comments.

Mr. DAVIS. Thank you very much, Mr. Chairman. And let me, first of all, commend you for calling this hearing.

I also want to commend you for the outstanding job that you just did on C-SPAN not only in terms of answering questions related to the subject matter, but also I appreciated the deft way that you handled those that were unrelated.

I really think that you did an outstanding job and wanted to say that to you.

It's also a pleasure to note the presence of our distinguished colleague, Mr. Cunningham, who is an outstanding leader and member of the Congress. And, you know, there are a lot of folks who wish they had the high tech valleys and communities to represent.

I always say that San Diego has to be the most beautiful city in this country, with due respect to all of the other places, including where I live.

But Mr. Chairman, as you know, I'm very concerned about small and very small businesses and the critical role they play in the nation's economy. The country's 22 million small businesses employ more than half the nation's work force and produce more than half of its gross domestic product.

Small businesses are the source of most new jobs and most of the innovation in our economy. On the back of the dollar bill, there is an unfinished pyramid with a brilliant, glowing eye at the top. It comes from the back of the great seal of the United States and it was placed on the dollar bill by President Roosevelt in 1935.

In the middle of the Great Depression, when the growth of America was in sharp decline, the pyramid was meant to represent economic strength and durability. The pyramid is unfinished to symbolize the constant struggle to keep our economy strong.

But I think that's what the exploration of small businesses going public actually is a part of, and that is a part of the continuing effort to find new ways, new approaches, new opportunities, new possibilities for the American people to become an integral part of the ownership of the greatness of our nation.

When the concept first sort of began to emerge, I had some thoughts and reservations about it. But then, the more deeply that I thought about it, it occurred to me that what we're really talking about are ways for individuals to become a part of the ownership of something that, in all likelihood, they may never do individually.

And that's why I'm such a great proponent of ESOPs; that is, the employee owned businesses. And I guess that's why I ride the airlines sometimes that I do. But it's really a great concept. You're to be commended for giving us the opportunity to look at it.

I certainly want to add my welcome to the distinguished panel of witnesses and look forward to a great hearing.

Thank you very much.

Chairman BARTLETT. Thank you very much.

I'd just like to comment on one of the observations you made, and that was that small businesses and very small businesses provide most of the new jobs. I mentioned this on C-SPAN a few moments ago. I'd like to repeat it here for the record.

And I couldn't believe these data until they were confirmed to me. When we came out of the last recession, if you divide our companies into categories relative to size from the largest down to the smallest, companies of 5,000 and more employees produced a few new jobs to bring us out of the recession.

No other group of companies, until you got down to the smallest, produced any new jobs. And 90-some percent of all the new jobs produced when we came out of the recession were produced by companies with zero to four employees.

Now that's small companies. And you know, Microsoft started just that way, in a garage in New Mexico, I think, and they went public and look where they are today. And so small business is not only the energy that drives our society, it's the engine that produces most of the new jobs when we need new jobs.

And the focus of our hearing today is simply to make public the requirements, the benefits, the rewards, the challenges of going public.

Let me welcome our witnesses: Mr. Brian Lane, Securities and Exchange Commission from here in Washington; Mr. John Wall, National Association of Securities Dealers, Washington; Mr. Michael Moe, Merrill Lynch & Co.; Mr. Keith Ellison, the Wharton School, University of Pennsylvania; and Mr. Mark Dankberg, who has already been introduced to us.

I want to thank you all very much for joining us, and we'll start now with Mr. Brian Lane.

Let me say that your testimony will be made a part of the record and you can feel free to summarize. And then when you have all finished, we will have an opportunity for questions and answers and we'll invite participation of the panel in addressing the concerns and the testimony of other panel members.

We'll begin now with Mr. Brian Lane.

**STATEMENT OF BRIAN LANE, DIRECTOR, DIVISION OF CORPORATE FINANCE, U.S. SECURITIES AND EXCHANGE COMMISSION**

Mr. LANE. Thank you, Mr. Chairman, members of the subcommittee.

My name is Brian Lane. I am the Director of the Division of Corporation Finance at Securities and Exchange Commission. And the Division of Corporation Finance, through its Small Business Office, is at the forefront of the Commission's efforts to help small businesses and deal with the regulation on going public.

What I thought I would do in my oral remarks is summarize very briefly the mechanisms that exist for small business, the regulatory mechanisms for going public, and take a few moments to mention some of the special programs that we have at the SEC and outreach that we've done for small business.

As you noted, small businesses need to raise capital, but the capital raising process is a difficult one, as you'll hear from other members of the panel here. Initially, small businesses are going to be raising capital from friends and family and from personal savings.

Then the entrepreneur may seek loans from others. If funds are sort of sought through the sale of securities to the public, the SEC

has what's called a Seed Capital Rule, Rule 504, which allows an entrepreneur to raise up to one million dollars free from federal registration.

They would still have to satisfy state registration requirements. And they're permitted to raise up to one million dollars in a 12 month period without having to worry about registering with us. Obviously they would be still subject to the anti-fraud rules though, the federal anti-fraud rules.

If a company wants to sell stock in a non-public manner—for example, to a so-called angel investor or someone like a venture capitalist or something like this—they're permitted to raise unlimited amount of money without registering with the SEC.

This is the so-called Private Placement Exemption. In the federal securities laws, the investors receive restricted securities. It is the difference that entrepreneurs find with the private placement route.

If a company decides that it wants to raise money by selling securities to its employees, you heard about ESOPs in the opening program, note that the Commission adopted a rule, Rule 701, which allows companies to sell—non-public, private companies to sell securities to their employees with no cap.

It used to be up to a five million dollar cap. But they can sell at a minimum of one million, regardless of their size, to their own employees. If they sell over five million in the year to their employees, they have to provide some minimum disclosure documents.

So again, we give significant breaks to small companies selling to their own employees who already have some knowledge, working knowledge, of the company and, therefore, are in a better position than just strangers to know about the company.

The next step in the company's growth process is to sell securities to the public. If a company wants to raise more than one million dollars a year beyond the seed capital exemption but less than five million dollars, they can use what we call Regulation A, which is an exemption from the registration requirements and it has many advantages.

It has reduced reporting requirements. It permits unaudited financial statements, no ongoing reporting obligations, and it permits what we call a "testing the waters" provision.

Because the federal securities laws regulate offers rather than sales, people are generally prohibited from just walking up without a registration statement to say "if we wanted to sell securities, might you be interested in investing in our company."

You can't do that unless you have a registration statement on file with the SEC. But under Regulation A, you are permitted to test the waters in advance; to go, before you spend money on hiring accountants and lawyers and all of that, that you could walk around to your suppliers, your customers, whatever and say "might you be interested" and give some the details on that.

So that's been a very popular program as well, and it's a very streamlined form to raise up to five million dollars. If you want to go over five million dollars, this is sort of the next step of the evolution, we have what we call Regulation SB, the initials for obvious reasons.



And that system is available for any U.S. or Canadian companies that have less than \$25 million in revenues and less than \$25 million dollars in public float, sort of the market capitalization that's held by the public out there. That's what we consider at the SEC a small business to be eligible to use this sort of streamlined disclosure regime.

And they can continue to use it repeatedly as long as they stay under the \$25 million dollar thresholds. If they exceed the \$25 million thresholds, then they have to go and file like other public companies, the more complete form.

In the past fiscal year, just in the past fiscal year, almost five billion dollars has been raised on Form SB2, which allows raising up to an unlimited amount of dollars under Regulation SB. It has some streamlining, but it's very close to typical prospectus that you would see in a public offering.

So this is just an indication of how popular the program has been for small businesses to actually raise money.

That's kind of the—sort of the graduation from a small business into a regular public company. Let me just take the last few moments to tell you about some of our special programs that we do for small business because we do reach out to the small business community to better tailor our regulatory system.

We host the only annual Federal Government sort of national small business gathering. We do once a year and we've had it since 1982 where small businesses can come and tell federal and state regulators how they need to change the rules and regulations and how they impact them.

So we have been doing this now for 17 years. And many of these recommendations that we have gotten from these annual forums have led to SEC action in changing rules and making them easier, things like Rule 701, to sell to your employees, and other sorts of rules.

Since 1996, when I became director, we have significantly expanded our Office of Small Business. And they review all the small business filings, so we now have a special unit that does nothing but review small business filings.

I have some of the staff behind me that work in that office. They do nothing but spend that time. And it is really a group that takes the extra time because small businesses sometimes have more questions about how the regulatory structure works than General Electric, for example.

So we have that. They also direct all the small business rule making, interpretations, and answer all the phone call questions. We also host town hall meetings across the country. This has been a recent development. We have had 13 town hall—small business town hall meetings in the last three years where we go around to Kansas City, Austin, St. Louis and basically just do what we are doing here today: tell people how the regulatory system works.

We usually invite the state regulator, the state securities commissioner, and we invite the SBA representative to come to talk about their loan program. And small businesses have to know about state registration because they do have to register with the states if they are really small.

And so we have found that to be really useful. And last I will mention that we have a web site with special small business information and we put out a pamphlet that we put out here on the table that is called "Q&A: Small Business in the SEC," which we wrote in plain English, which is something that we're pushing for in prospectuses.

Everything you need to know about what regulations—I just talked about today, Regulation SB, what is Regulation A, what are my requirements if I go public, what do I have to do, what are the considerations. And then phone numbers. You want to find out, talk to the state regulators and such, then this is a very helpful guide.

The small business program, ACENet and what have you—and I noticed the NASD has a guide here, too, that was on the table that looked good about what you need to know.

So I'm happy to be here today to tell you about these kinds of programs and I look forward to your questions.

[Mr. Lane's statement may be found in the appendix.]

Chairman BARTLETT. Thank you very much.

Mr. Wall.

**STATEMENT OF JOHN T. WALL, PRESIDENT AND CHIEF OPERATING OFFICER, NASDAQ-AMEX INTERNATIONAL, NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.**

Mr. WALL. Thank you, Mr. Chairman.

We are delighted to have the opportunity to be here and talk to your Committee on Small Business about the very important thing of being able to bring companies public and seeking public funding for the continued growth of these companies.

Often our citizens don't get a chance to focus on the importance of the fact that this country is blessed with strong financial markets, actually financial markets that are the envy of world financial markets, because our markets have been able to produce more what we call IPOs, new companies into the public market, than any other market in the world.

The U.S. dominates this. In Nasdaq alone, since 1989, we have brought over 4,200 new companies into the public markets. That equals raising over \$154 billion dollars in new capital to support new businesses.

This would not be possible, however, without a strong infrastructure of the financial services industry, coupled with a very strong regulatory structure. The partnership that we have in this country between our industry, in terms of self regulation, and the Government, in terms of SEC regulation, is a very important function because it gives confidence to the investors whose money we're seeking to bring into these small businesses.

The customer protection, we believe, is a very, very important factor and one that cannot be overlooked when we talk about public monies because it is the investor's money that we are reaching out to use. We owe the investor information, we owe him strong financial information as well as disclosure in terms of how companies are doing.

There are many benefits of going public. Obviously for the company, the growth aspects are the most important, the ability to go

from stage to stage in terms of its own growth, the providing of ownership to their own employees and also the ability to then use that stock as an asset to acquire other companies and to merge with other companies.

However, if you really look at the true macro benefits, there are two that come immediately to our minds and two that we have supported since we began Nasdaq. The first is obviously job creation. Job creation in the United States, as we heard earlier, is something that small businesses do regularly and is overlooked.

There was a study done between 1990 and 1995 that showed one out of every six new jobs in the United States was created by a Nasdaq company. Nasdaq companies only account for less than one percent of all companies in the United States, but that job growth and that job creation came from these new companies coming into the public markets. If you look at the Fortune 500 companies, you will find that they lost over 200,000 jobs during that same period. So this supports what you were saying in your introductory remarks, Mr. Chairman, as a very important factor.

When we created and started Nasdaq, our primary mission was capital formation. And coupled with the SEC disclosure rules, we opened our market to companies that didn't have profits, companies that were just starting.

But as long as they disclosed to the investing public exactly where they stood and how they were functioning, we felt that they should have an opportunity to come into the public markets.

I can state that there are full industries that would not have been built if it weren't for this willingness to open the public markets to companies that did not have profits, industries such as the biotech industry, industries such as the internet industry.

And much of our technology industry that has been created in the last ten years would not have been founded if we did not open our public markets this way. So Nasdaq has been at the forefront of this in terms of the IPOs since 1989.

Over 82% of them came out of the Nasdaq marketplace, and if you look at those 4,000 companies, it might be interesting to look to see how they were segmented in size. Over 25% of those 4,000 companies raised only between four and ten million dollars. The next 50% raised between \$10 and \$40 million dollars. And then the balance of the remaining 25% raised anywhere between \$40 million and \$4 billion dollars. But the preponderance is really in the small area and, as a result, we found it was an opportunity to tier our market into two groups.

We have a small cap marketplace and we have a national marketplace. And we do that to bring in small companies to let them grow from one tier to the next and also to alert the investor that they're dealing either with a small cap company or a national market company. The investor should know that because obviously there has been, and will be, greater risk in some of the smaller companies and they should know that at the time they are investing.

The criteria, or rather the model, of these IPOs is interesting. If you look at 1997, we found most of the IPOs coming in with an average of about ten dollars in terms of public offering price. They raised about \$40 million dollars on average. They had assets of

about \$125 million dollars, revenues of about \$50 million dollars, and overall market cap after the offering of about \$166 million dollars. So that gives you a profile of what we see coming in as IPOs into the Nasdaq marketplace. When you look at this, however, you cannot just look at the benefits. You also have to look at the quid pro quos, and it is not a one way street. Because when companies reach the public markets, they have a responsibility. They are reaching out to individual citizens' pockets and they have to give something back. We look at that as information.

They must be willing to not only share the benefits of their company, share with the investors that they have brought in, but they also have to share immediate information so I, as the investor, know exactly what's happening in that company that I have put my money in. And obviously that is a change of mind set for many managers when they go from a private company into a public company.

Looking at this and looking at the beginning of IPOs in the beginning stage of public companies, we also have to take a look at the fact that we have a very strong venture capital market in this country. Venture capital provides more than just money to young companies. It provides mentoring. It provides managers who are experienced, who then go on the boards of these companies, and who help direct them to the next stage of growth, that being an IPO in the public markets.

Last year, 52% of Nasdaq IPOs came with venture capital backing. At that same time, 98% of all of the venture backed companies came into the NASDAQ stock market. We find this is a very important factor in the growth of the United States in its ability to raise capital for young companies.

As a matter of fact, again, if you look worldwide, that is one of the major assets that we have and that is why we see so many companies, foreign companies, coming into the United States and doing distributions of shares here because in the United States our markets are open to this and we are open to providing capital.

Other forms of capital would be angel financing where you have individual investors. But one of the biggest changes, and growth areas, happens to be corporate ventures where you find major corporations now investing in individual companies normally along the same segment lines that that company is in, whether it be technology, biotechnology, computer peripherals or whatever the product is.

So we are finding new pockets and new avenues for companies to raise capital. And again, what we call the beginning stage of capital we feel is very important not only because it provides the company money, but it also provides them tremendous guidance that they need at that stage of their growth.

So we think that the market here in the United States is strong, will continue to be strong, and the focus that you're putting on this is very beneficial. And it will not only be beneficial to new companies, but it will also be beneficial to the investors here in the United States.

Thank you.

[Mr. Wall's statement may be found in the appendix.]

Chairman BARTLETT. Thank you very much.

Mr. Moe.

**STATEMENT OF MICHAEL T. MOE, CFA, DIRECTOR OF GLOBAL GROWTH STOCK RESEARCH, MERRILL LYNCH**

Mr. MOE. Thank you, Mr. Chairman.

I'm delighted to be here this morning to talk about what we think is a critical area, and that's a company's ability to, and the issues surrounding going public.

During the 1990s, the U.S. economy in general, and the U.S. capital markets in particular, have experienced dramatic growth. U.S. equity capital markets have gone from \$3.1 trillion dollars in 1990 to nearly \$13 trillion dollars today.

Technology has been the driver of the new economy, but IPOs have really been its fuel. If you look since 1990, there have been over 5,000 IPOs in the United States for companies, raising \$327 billion dollars.

Since 1990, 15 million jobs have been created, many of which were from companies that didn't even exist in the decade prior. If you look at the fundamental demand imbalance that's been created in the equity markets from the cash in Flows to equity mutual funds as well as corporate stock buy backs and cash M&A transactions, this has created a significant fuel, if you will, to support raising capital for new companies in the IPO market.

With the aging baby boomers saving for retirement, we see a net demand imbalance for equities for the foreseeable future.

The new economy really is a knowledge economy, and knowledge economy is all about human capital. A fundamental tenet of the new economy is that stock ownership throughout an organization is absolutely fundamental and essential.

Where I live in San Francisco, it is expected that everybody from the CEO to an entry level person owns stock in the company. And there is an expectation that the stock of one's own company will ultimately be a publicly traded company and that an IPO is absolutely critical not only for the modernization of the success of an enterprise, but as a way to attract and retain key talent, which again is absolutely fundamental to what's going on in the knowledge economy that we are now in.

Statistically, companies are going public earlier—earlier in terms of profitability than we have seen from our records. In fact, since 1998, 57% of the companies that went public were not making a profit at the time.

While some of this has to do with the internet, we believe some of this has to do just with the realities of how important it is to be a public company in the new economy. We also think with being a public company there comes a level of expectation from public investors which requires two things.

One is both constant and accurate information to investors, but also a performance against expectations that is consistent with how investors would expect a public company to perform.

Just some examples of two key drivers for performance in the public markets and what investors look for. One is earnings growth, but then the second is earnings growth against expectations. Three examples I would like to point out, three companies

that have been very, very successful in this under promising, but over delivering high earnings growth.

One is a company called Starbucks Coffee, which is now the largest coffee provider in the world. They went public in 1992, and the expectations for Starbucks were that they were going to grow their earnings at 27% per year. Point of fact, they grew their earnings at 37% per year and Starbucks stock appreciated 45% per year since 1992, or a dollar invested in Starbucks is worth \$16 today.

Equally impressive, Starbucks' stock ownership goes all the way down to even part time employees, through what they call their Bean Stock Program, truly a new economy type of company.

Second example, Apollo Group, which is now the largest private university in the country focused on working adults, with over 6,000 students on line. Expectations for Apollo Group were that they were going to grow their earnings at 25%. They performed at 50% earnings growth and the stock was actually up 89% per year, or a dollar invested in Apollo Group's IPO was worth \$22 today.

The last example, which is an internet example, is with Amazon.com, which doesn't make money, so they perform against earnings growth isn't relevant. But expectations were that Amazon was going to grow their revenues at 69%.

Point of fact, they delivered 350% revenue growth, and a dollar invested in Amazon at its IPO are worth \$60 today.

How do you identify what are key, crucial issues and characteristics that investors are looking for in companies that are going public and what really makes a great public company? One is high earnings growth and the other is performance against expectations.

This idea boils down to four characteristics which we think are absolutely crucial that investors are looking for; what I call the four Ps for a public company.

The first P stands for people. There is no shortage of interesting business plans or ideas out there, but execution is the key. Many of these companies that are going public do not have long corporate histories, but the people at these companies all do.

Investors are looking for a management team, first and foremost, that they feel can execute and perform to a level of the opportunity.

The second P stands for product. And here what we are really talking about is a company that leads an industry, has a dominant position within a marketplace, a one of a kind type of company, some type of claim to fame. "Me too" companies are of very little interest to public investors.

The third P stands for potential. Here, investors are looking for smaller companies that can be big companies, open ended growth stories, something that is going on that creates a tail wind at the back of these companies.

In this, and through the written testimony, we show a chart how investors think about these megatrends that are going on in the new economy: globalization, outsourcing, demographics, branding, consolidation. And the megatrend of all megatrends, the internet.

And how those cut across the growth sectors of the economy we think are very important for how investors look at the companies they invest in and really create this tail wind that I alluded to.

And the last P stands for predictability. This is the performance against expectations. This is having a business model that will

allow a company, as a public company, to perform as public investors would expect.

So just in summary, an IPO and being a public company can have tremendous benefits for the issuing business. Moreover, in the new economy, broad employee ownership and stock options are a competitive necessity. We think that the U.S. capital markets have provided and will likely continue to provide funding liquidity for promising enterprises.

But critical to that is to be able to have markets that are open and equitable. And companies need to have appreciation and understanding of what the responsibilities of being a public company are.

Thank you.

[Mr. Moe's statement may be found in the appendix.]

Chairman BARTLETT. Thank you very much.

Mr. Ellison.

**STATEMENT OF KEITH D. ELLISON, INTERIM DIRECTOR,  
WHARTON SMALL BUSINESS DEVELOPMENT CENTER**

Mr. ELLISON. Good morning, Chairman Bartlett, Congressman Davis, and other members of the subcommittee.

My name is Keith Ellison and I am the Interim Director of the Wharton SBDC, a unit of the Sol C. Snider Entrepreneur Research Center at the Wharton School.

I also represent today the Association of Small Business Development Centers, which comprises over 1,000 SBDCs across the country, each of which are parts of higher educational institutions.

I would like to thank you for inviting me here today to discuss the process of going public and selling securities on the stock exchange. The focus I would like to cover today are the barriers. But before we go into the barriers, I would like to step back and discuss the successes that we have had throughout the SBDCs.

We work with companies like ViaSat in getting them to the point where they are ready to go public. In Philadelphia, one of our most—one of our high profile clients has been CDNOW. I am sure a lot of you are familiar with it.

CDNOW is the leading player in e-commerce in the music industry. Another player is a company that took advantage of an exemption through the SEC under Regulation D504. It is called Next Step Magazine, which talks about cultural diversity.

Before we can really go into the barriers of success or the barriers of an IPO, and before we can talk about solutions, let's talk about what the common definition is of success. Let's establish what a definition of a successful IPO is.

Because a successful IPO means different things to different people. To an investment banker or to the underwriter, it means buying a block of stock and selling all of them to the public for a premium. To a day trader, it means taking advantage of the IPO and taking advantage of the hype surrounding the IPO and buying it at its low point and selling it at its peak.

To all the other players in the IPO process, the accountants, the attorneys, the underwriters, the transfer agents, success means different things to different people. My point here is that there is di-

vergent interest among all the players, among all the parties when you are involved in an IPO, which leads to the barriers.

Barrier one is assembling the IPO team. It is very difficult for a small business to find people with the right context who can navigate themselves through Wall Street, who can speak the language of the SEC to make the process extremely efficient.

And just to add a bit of humor here, finding the right IPO team is analogous to a story. It is a story of a fifth grade class where the teacher—it was a history class and the teacher was talking about how the country was founded and who were the players and what were some of the significant dates.

And so finally, she came to little Johnny. And she says, “Johnny, tell me, who signed the Declaration of Independence?”

And Johnny looks at her and he says, “I don’t know and I don’t give a heck.”

And he says, “Look, young man, you go home right now and do not come back to school without your father.”

So Johnny goes home. He’s trying to explain to his dad why he is home so soon. So his dad says, “Johnny, slow down. Tell me what really happened.”

And he says, “Well, Dad, she asked me who signed the Declaration of Independence. I said I don’t know. And she says, ‘Well, do not come back to school without your father.’”

So his father looks at him and he says, “Well, look. I am going to go down here and straighten this out. But if I find out that you signed that darn thing, you are going to be in serious trouble.” [Laughter.]

That is analogous to what an entrepreneur faces when they are trying to find the right accountant, the right attorney, the right printer, the right board members, the right advisors who can guide them down the path to meeting the right investors.

And therein lies the problem or part of the problem. But it is not just the players. It is also the experience of the entrepreneur. Because to go public, as my distinguished panelist said, you look at the people, the people who are going to take the company to the next level.

And that is where the role of the SBDCs across the country play. We educate and we train entrepreneurs to get to that point where they can matriculate through the early stages where someone is using their own money or the money of a rich uncle, to the point where they can get an SBA backed loan or an angel investor, to the point from there to a venture capitalist, and then to go public.

It is that point—that process where SBDCs have the greatest impact. To underscore my point about having context, one of the greatest examples was Joe Segel, founder of QVC and also founder of Franklin Mint. Joe Segel, in 1986, took the company public, took QVC public based on a business plan and, of course, his reputation in the context that he has—or he had.

There are few Joe Segels of the world. And so again, that is just one example of the importance of where the emphasis of the person and how much credence that person brings to taking a company public.

Barrier number two, which is most likely the biggest deterrent, is the cost. It is very common, during the IPO process, for a busi-



ness to spend half a million dollars from the time that they are planning—from the point that they say let's go public until it is wrapped up.

And that is an extreme deterrent. Not everyone can raise that kind of capital.

Barrier number three is continuous distractions. An entrepreneur should be doing what an entrepreneur should be doing. That is running a business. And unfortunately, because of all the right reasons, sticking to the strict rules of the SEC—and when I say all the right reasons, I mean proper disclosure, public protection.

Because of those reasons, it is an emotional drain, it is an energy drain, and it distracts an entrepreneur from running his or her business when they are coordinating with all the other IPO team members and when they are communicating with the SEC.

So, in summary, barrier one is assembling the IPO team. Barrier two are the cost barriers. And barrier three, again, are the continual distractions. And I must repeat those are the areas that the SBDCs of the world play the biggest—have the biggest benefit for entrepreneurs.

Again, I would like to thank you for allowing me to present today, and I look forward to being a part of the process moving forward.

Thank you.

[Mr. Ellison's statement may be found in the appendix.]

Chairman BARTLETT. Thank you very much.

Mr. Dankberg.

**STATEMENT OF MARK DANKBERG, PRESIDENT AND CHIEF  
EXECUTIVE OFFICER, VIASAT, INC.**

Mr. DANKBERG. Good morning. Thank you very much, Mr. Chairman, ladies and gentlemen. And thank you very much for the opportunity to tell ViaSat's story. It is really an honor for us to be here at all.

I have submitted a written statement for the record and would like to summarize some key points here.

We think we are a prototype of the American success story. Steve Hart, Mark Miller and I started the company in 1986 working out of a spare room in my house. We have grown in sales every year and we have been profitable every year after the very first year.

ViaSat's now headquartered in Carlsbad, California, near San Diego, and employs about 400 people with sales over \$70 million dollars for the fiscal year that ended March 31st of this year. We are a high tech company specializing in advanced digital communications products and systems.

Generally we compete with and work with companies like Motorola. Most of our products involve satellite communications networks, and ViaSat serves customers around the world including the U.S., Europe, Asia, Australia and Africa.

And we even have satellite communications equipment on Air Force One. Most of our business is in defense, but our fastest growing segment is commercial satellite networking. We started as a self funded start up with about \$25,000 from the three of us.

We later raised about \$300,000 in venture seed funding, and then, a few years later, got a commercial bank line of credit. We ended up doing about a \$20 million dollar public offering in December of '96 and are listed on NASDAQ.

We believe the American entrepreneurial environment is the best in the world. We think we are a good example that our system works; that public and private resources available to entrepreneurs, combined with hard work, dedication and at least a little bit of luck, offers real opportunities to live the American dream, starting a company and taking it public.

The Government Small Business Innovation Research Program, known as SBIR, was a big enabler for growing our company to the point it could go public. We think we have been one of the most successful companies at converting SBIR seed R&D funds into commercially viable phase three business.

We think the SBIR program is probably the single most effective Government program for fostering both the growth of small business and for innovation. Our first direct Government program was actually a \$50,000 SBIR phase one contract for a communications environment simulator for the Naval Air Warfare Center at Patuxent River Naval Air Station in Maryland back in 1987.

That \$50,000 phase one earned us an additional \$500,000 phase two contract. But since then, we have received over \$40 million dollars in phase three contracts from the Navy, Air Force and prime contractors like Lockheed Martin for products we developed directly from that initial award and we still do work for the same customers.

Plus, we estimate that the DOD saved about \$40 million dollars because of the technology that we developed under that SBIR program. And we have been able to repeat that success in a couple other business areas generating over \$100 million in contracts with similar savings to taxpayers.

Building on that foundation, ViaSat reached about \$20 million per year in sales and close to about \$2 million in pretax profits in our fiscal '96, the year we went public. We had also earned a small foothold in commercial satellite networks.

We found the process of going public to be straightforward, but very time consuming. Probably the single biggest factors though in dealing with that are the volatility of the stock markets and the global high tech product markets, which greatly influenced the timing and reception for an IPO.

We found the SEC, in particular, to be positive and constructive to work with in assembling our offering documents, with the big issue really being to present a fair and balanced view of both the opportunities and risks of investing in our company.

We have been public for about three years. We felt like we had a good understanding of the changes that would be involved in being a public company. But I would say that the reality has probably been a little "more"—with "more" of almost everything in terms of time consuming than we anticipated.

Not that that is due to anything necessarily bad or bureaucratic. It is just something that every company ought to be aware of.

Overall, I would say that the company and its investors have had a positive experience. Well, the company has, and I hope our inves-

tors have. And I believe access to the public markets is a big advantage to American entrepreneurs.

Thank you once again for providing an opportunity to tell our story here.

[Mr. Dankberg's statement may be found in the appendix.]

Chairman BARTLETT. Thank you very much.

Washington is full of acronyms and you all have used some acronyms in your presentations. I would just like to get on the record what some of these acronyms stand for.

IPO? Just about every one of you used IPO and I do not think any one of you defined it for the readers. IPO is what?

Mr. WALL. Initial public offering.

Chairman BARTLETT. Okay, initial public offering. That is when you go public, okay?

SBDC? I am really pleased that two of our witnesses referenced the good help that the Small Business Administration had been to them. SBDC is what?

Mr. ELLISON. Small Business Development Center.

Chairman BARTLETT. Okay, and they are located where?

Mr. ELLISON. There are a little over a thousand across the country. Most of them are parts of universities. In fact, I believe close to 99% of them are parts of universities. The Association of Small Business Development Centers is sponsored by the SBA, and they are headquartered in Virginia.

Chairman BARTLETT. And their function is what?

Mr. ELLISON. The function is to assist emerging businesses with management consulting, which means assisting with business plans, overall operational issues, helping them grow the business, helping them reach their milestones, as well as training.

Chairman BARTLETT. One of the resources that you have available are the SCORE people?

Mr. ELLISON. Yes, we do.

Chairman BARTLETT. And can you tell us what—

Mr. ELLISON. We are in partnership—

Chairman BARTLETT. Can you tell us what SCORE stands for?

Mr. ELLISON. That is a very good question. Forgive me, I always do not remember that acronym, but it is—I know the last two is retired executives.

Chairman BARTLETT. Okay, it is Service Corps of Retired Executives.

Mr. ELLISON. Yes.

Chairman BARTLETT. And I am particularly fond of this part of the Small Business Administration because I think we get the most bang for the buck there. They do not get paid anything. We pay their travel expenses and these are retired executives who just have fun helping other people do what they did.

And then the last one is SBIR?

Mr. DANKBERG. SBIR is Small Business Innovation Research Program, and that is administered by various defense or non-defense research agencies and the Small Business Administration. And it is a way to provide relatively small amounts of seed funding for R&D to small businesses with under 500 people, and we think it is a great program.

Chairman BARTLETT. Well, thank you. We are very pleased with the reception that the Small Business Administration programs have across the country. Not all of taxpayers' dollars are spent as well as these dollars are spent. They plant the seed that yields big rewards for our American economy.

Let me turn now to my colleague, Mr. Davis, for his questions and comments.

Mr. DAVIS. Thank you very much, Mr. Chairman.

As a matter of fact, as I was listening to the testimony, I was tempted to run out and give Aida Alvarez a call and say run over here quick. I mean, there is some people saying some good things about the Small Business Administration and so you better hurry up.

And I also was wishing that some of the appropriators would have been here also and some of those who have put together our budget who think that some of the resources we have been asking for the Small Business Administration is not quite needed.

We are afraid that we may not end up with what we need to carry on all of these interesting and exciting programs. But that is simply a way of saying—

Chairman BARTLETT. If the gentleman would yield for a moment.

There is a joke that always gets a laugh from an audience. The fellah comes up and says, "I am from the Government and I am here to help you." You know, that does not get a laugh when they are from the Small Business Administration because these are Government people that are there to help and it is generally recognized and I thank you all for your input.

Mr. DAVIS. Absolutely.

I have one question, Mr. Lane. I was trying to determine, are there any type businesses that we are seeing making more of a move towards going public than perhaps others are? Are there any businesses that are prime possibilities or in better position in terms of public perception at the moment than others perhaps to pursue public movement?

Mr. LANE. The short answer is yes. And there are several people at this table and you heard from some of the panelists that obviously the technology sector has been the number one. A lot of this is really driven by what investors want.

And as you heard from my colleague on the panel here, investors are very interested in internet companies. That is why you are seeing them have such an easy time. You are really seeing companies that have a life—a corporate life of less than a year starting the public offering process, which is unheard of.

And there is a great appetite by investors for anything with a .com, as you have read in the paper. I think some of that enthusiasm is quietening a little bit, but we are seeing it in telecom. It is very hot right now.

Biotech fluctuates. It sort of goes out for a while, comes back in. But it is really driven by market taste more and maybe other panelists would have something to say. And you will find that, for now, if you want to put together a real estate investment trust, the market is not as excited today, and so people are going for the technology as a result.

But it is really driven, I think, in short by investor appetite. That is what we are seeing at the SEC.

Mr. DAVIS. Anyone else want to—

Mr. MOE. Just to kind of elaborate or reiterate, I mean clearly when you look at companies that have gone public over the last two years in particular, the lion's share have a technology orientation, many of which are internet or .com type of names.

And, you know, there are different seasons where investors have different appetites, but clearly the wave of technology is such that it almost seems to be an insatiable appetite for investors to find innovative, growing technology companies.

Mr. WALL. And I think this is being driven by the new economy that you talked about. It used to take years to create a product. What we are seeing now is compounded innovation. You start a company and it branches out into three or four new products.

Those products create companies themselves. If you look at Microsoft, for instance, the number of companies Microsoft has spun off in new products is tremendous. And so what you are seeing is the compounded innovation of ideas in the information technology area. And you are seeing them come to market much, much earlier because they need capital to go through the various stages.

Mr. ELLISON. I would like to add a comment also. At the Wharton SBDC, just our client base—the composition of it took a transition from a year ago. About a year ago, about 40% of the new cases that came our way were internet-based. Now it is closer to 75%.

As a matter of fact, part of the Sol C. Snider Entrepreneur Research Center, we host a business plan competition among students throughout the university. And I do not remember the figures, but there were at least 200 submittals and there were six finalists.

All six were .com companies. My prediction, which will hopefully lend to the discussions and lend to our solutions to this, is that there is going to be a backlog for the SEC because of this .com fever.

Mr. DAVIS. I think all of your comments actually not only point out what is happening then in this arena, but it further raises the issue and the question of the digital divide and how important it is to make sure that our educational systems contain the kind of technology opportunities for youngsters and young people so that they will be in a position to take advantage or to compete.

Mr. Lane, also I wanted to ask you what has been the response to the town hall meetings that you have held?

Mr. LANE. Well, so far we have had great response. We started out our first few getting like 75 people and such. We now—in Kansas City, we had over 200. In Seattle, it was standing room only when we went there.

And as I said, we typically have the Small Business Administration representative there, as well as the state securities commissioner. And to my knowledge, it is the only place where we put together all three pieces.

Sometimes small businesses that come to these—these are really small businesses sometimes—they are not ready to go public, but they want to hear what they need to know, and they would rather talk to the SBA people about their 8(a) program or, you know, something like that.

But they still want to hear about what they need to be thinking about going down the road. And for a lot of people, the thing they forget most is that the states also register. If you are a small business and you do not list on the NASDAQ National Market System and the New York Stock Exchange, if you do not list on one of the national markets, you have to be reviewed in each state in which you want to sell.

And small businesses need to be aware. That is why we make sure to work closely with our state regulators and the SEC does that. So I think it has been very successful because many states also have some pro small business programs. They want to get out there and say here is what we are doing as well to try and facilitate.

So, so far I have been very pleased.

Mr. DAVIS. Well, you have got me thinking that I probably want to look at putting one of those together in Chicago.

Mr. LANE. We had one in Chicago actually—

Mr. DAVIS. Really?

Mr. LANE [continuing]. In '97 I think.

Mr. DAVIS. Oh, okay.

Mr. LANE. I'm looking back at Richard and Barbara here who help coordinate these programs. But Chicago is, I think, the second one. We started in Los Angeles, then Chicago. And we have been looking now for some of the smaller communities that never see an SEC person.

You know, in New York we do not have a Small Business town meeting in New York even though they have Silicon Alley that is growing there. They see a lot of SEC people. There are conferences and whatever.

And I am thinking places like Kansas City and, you know, Birmingham or, you know, Pittsburgh, places that have a lot of companies, San Diego, that do not normally get Government people all together to talk to them and answer their questions is sort of where we have been focusing lately.

We actually have one—we are going to do one in Anchorage because there was a great deal of interest in a Chamber of Commerce up in Anchorage, and others have been very supportive of putting this program together. And it looks like we are going to get a big turn out, so that is the next program.

Mr. DAVIS. I think my last question here is have any of you heard any reservations from people who are afraid that as most small businesses look at going public, or as we move to the point of small businesses seeking to grow and develop, that somehow or another that will take away the small business aura and that everything is just moving towards becoming, you know, a Microsoft or whatever?

Mr. ELLISON. Well, I will take a swing at that one first, and this is just my opinion. I think, based on the number of small businesses that are actually public and the number that are going public compared to those that are not, I personally have not heard a fear.

And the rate that companies are going public is so small that I do not see it instilling a fear. But I want to get back to your previous question about town hall meetings. There is a very important

element with doing business in general that everyone should look at, and that is the diversity element of doing business.

And I say that to say that the IPO process and thinking about IPOs can be intimidating to individuals depending on their educational level, depending on their geographic area, depending on their cultural make up.

And as we look at ways of tweaking the process, of rolling out more forums, more town hall meetings or whatever is appropriate, I think that is something that should be looked at closely because someone in Boise, Idaho—let's just say a white male in Boise, Idaho versus a Latino in Houston, Texas, there are various ways that you should communicate, and those are the things that you should look at.

Because everyone in those communities—each person in those communities can bring something to the table and bring something to the economy. And again, like I said, I am more than willing to assist the subcommittee in those efforts as well.

Mr. DAVIS. Thank you.

Thank you very much, Mr. Chairman.

Chairman BARTLETT. Thank you very much.

Mr. Lane, you mentioned testing the waters. Did I understand correctly that while you are doing that, you could sell up to \$5,000 worth of stock?

Mr. LANE. No, you cannot. What testing the waters does is not permit you to sell, you just inquire.

Chairman BARTLETT. If I wanted to sell, will you be interested in buying?

Mr. LANE. That is right.

Chairman BARTLETT. Okay.

Mr. LANE. Then you have to grow quiet for a while. After you have tested the waters and people said yes—you know, you run a bakery or something, people come in and they say we love your pastries. Boy, if you sold stock, count us in, you know, sort of thing or whatever it might be.

Then you would say fine, I am going to the expense, I am going to hire a lawyer, I am going to get my financials in order and all this sort of thing. And there is a period of time that elapses. Then you can file this Regulation A. It is a Form 1A that you can do in Q&A format. It is a very easy form.

Then you can sell. Once you go through the SEC, up to five million dollars in one year.

Chairman BARTLETT. And it is only recently that they have been permitted to test the waters?

Mr. LANE. Yes.

Chairman BARTLETT. Well, how did they ever make a decision to go public if they couldn't ask somebody if I was selling stock, would you be interested in buying it? It would seem to me that that is a necessary step in making the decision to go public.

Mr. LANE. I think the commission recognized that, what was it, in the early '90s—in '92 when we adopted that provision. I think what happens is that the SEC just kind of knew that people were talking and you tried to chill it as much as possible, but they would actually talk about precise aspects of what the offering would be.

The idea is because when you are regulating offers, the investors need to know at the time I show up at your doorstep and say I have got this great idea and I would like to know if you would be interested in it, that you say who are you, you know, what is your background, you know, these kinds of questions that you need to ask.

And you need to know that before you write your check rather than after you write your check. So that is why. And you are right, small business people in particular were saying hey, you know, this is coming out of some of the forums we had earlier last decade about we would like to be able to talk to people.

We would like to be able to ask people if they would want to invest. And before you would have to kind of go to an investment banker. How they used to do it is they would go to the—if you are a real small company, you go—maybe you would go to an SBDC.

You would go to a little regional investment bank, a regional—you know, not Merrill Lynch right off the bat if you are a little company, and you say here is my idea, do you think anybody would be interested in it. And the SBDC would say yeah, this is an interesting idea or that is not going anywhere.

And the same with the regional investment bankers. You would use them as your agents to try and find out. When we allowed testing the waters, you could do it direct, disintermediate. You can go direct. And that is going to be actually even more interesting in the age of the internet.

Mr. DANKBERG. We found we use medium size investment banks. And one of the things that was important to us is even though the company itself has to invest a lot of money in the IPO process, so do the investment bankers. I mean, they also spend a lot of money in the anticipation of the IPO.

And one of the things we rely on is the investment bankers' opinion about the viability of being able to sell stock. If the investment bankers think there is a market for it and they are willing to risk their money, that makes it—generally it is a good sign for the company.

Chairman BARTLETT. Thank you.

You mentioned town hall meetings. I was wondering if you ever held those in conjunction with the representative in that district?

Mr. LANE. We have. Now, Chairman Levitt does investor town hall meetings, too. We have investor town hall meetings and we have small business town meetings. And the chairman has done some of each. The investor town hall meetings oftentimes are done with members of Congress that are invited too to just kind of hear what investors and their districts have said. Small business—we had one in Las Vegas that had a senator present. We usually invite members, especially if we know there is someone that is on the Small Business Committee or something like that that might be interested. Like at Kansas City we invited Congressman Bond because he is on the Small Business Committee.

And you know, sometimes they show. A lot of times they do not. It is really the Chamber of Commerce that tells us who is interesting in the local community that is pro small business that might like to attend.



And so we work with the Chamber of Commerce to do that. But we are happy to, you know, work with members of Congress. And anybody who is interested in small business that would like to be a part of that we reach out to.

Chairman BARTLETT. I would think members of Congress would be very interested. Our district, for instance, we have only one company in our whole district that is not small business. So small business is certainly the engine that drives the economy in our district.

We have been joined by Ms. Millender-McDonald, and I wondered if she had any observations or comments?

Ms. MILLENDER-MCDONALD. Now, Mr. Chairman, thank you so much, and indeed I have as the ranking member of empowerment. And certainly I agree with you. And let me first thank you and the ranking member, Mr. Davis, for holding this hearing.

I was in the aviation subcommittee and talking about delays and bad weather and all of that, so I had to really get my two cents in there before coming here. So I am sorry for this delay.

But you are absolutely right, Mr. Chairman. The small businesses will be the engine that drives, especially in the 21st Century. And we also recognize that women-owned businesses are really the largest business growth now in that whole spectrum.

But given that, a couple of weeks ago I had a hearing on going public and we found that, in talking with those who were at this hearing, that most of the businesses would like to go public because they want to either grow their business or want to expand the business, but they had a difficult time with access to capital, especially African-American businesses.

So I would like to ask each of you what are you doing to ensure, if at all you are, that type of—those types of barriers—to eliminate those barriers; and, if at all, the percentages of small and minority businesses, specifically women and African-American businesses, that you are reaching out to and helping them for that access to capital?

Mr. LANE. Well, maybe I will start as representing the SEC. We do have a special small business program that reaches out to all small businesses in the sense of not only the exemptions that are available for raising up to one million dollars.

We do not have a targeted program for—as the Small Business Administration has for like 8(a) programs for women and minority-owned businesses. What we do is we just help anyone who calls. You know, we have the brochures and we go out and do our town hall meetings around the country and not necessarily in the biggest of cities and invite everybody and work with the Chamber of Commerce and people that know the areas to hope to get any kind of small businesses that normally never get to see a Federal Government—

Ms. MILLENDER-MCDONALD. Mr. Lane, given the fact that those have been barriers, would there be some interest in your extending beyond the stretch of what you are doing now to extend to those areas that have been most, you know, impeded by the growth with the inability to have access to capital?

Mr. LANE. Yes, absolutely. And if there was a district or some area or some kind of program—

Ms. MILLENDER-MCDONALD. Thirty-seventh congressional district in California will be the first step.

Mr. LANE. Okay, just let me know and we will work with you to—if we can get—all we ask is that we get a sufficient turn out. You know, if we can get the—

Ms. MILLENDER-MCDONALD. Oh, absolutely.

Mr. LANE. If we can get the interest, then we will come.

Ms. MILLENDER-MCDONALD. Okay, fine.

Mr. LANE. That is all we care about.

Ms. MILLENDER-MCDONALD. Very well.

Mr. Wall.

Mr. WALL. We do not have specific programs either. What we have is criteria for listing, and that is how we judge a company whether it can come into our market as being a public company. Those rules obviously are filed with the SEC and approved.

But we do segment our market between national market companies and small companies, small cap market companies. And the net tangible asset requirement for a small cap company is only four million dollars. So we have tried to provide an opening for small businesses to come in to Nasdaq through the public markets.

We do not distinguish, however, in terms of minority ownership. And quite frankly, that is in the prospectuses, that is open and on our web site so you can go in and look to see who the management is and that information is available.

Ms. MILLENDER-MCDONALD. Sir, again, given the fact that the majority of business growth, especially small business, is that of women, and women tend to have the least amount of capital to try and expand, is there a program within your four million dollar range that you can help them in finding those connects to, you know, help in this access to capital?

And is that something that I can interest you in?

Mr. WALL. You certainly can. At this stage, we do not have that. And yet, maybe there is a step before the public process whereby you could find a way to do that in the venture capital area, in the angel capital area, in the area that we were talking about before in terms of small business. I think that may be the first step. Because a problem that we find for new companies coming into the market if you look at Nasdaq last year, is that we had to delist over 10% of the companies on Nasdaq for not meeting continued requirements.

Part of the reason for that is the fact that managers coming into the marketplace do not have the experience, do not have the education, do not have the background, and that has to start before the IPO process. That really has to start on the educational basis, it has to start in with the venture capitalist where you have mentoring to those smaller companies, and in other ways of finding capital.

Ms. MILLENDER-MCDONALD. And I certainly do agree with you on that a lot of times this technical experience and skills that are missing. But you know, there is a need also for some of you to help in that area as well because, again, we are looking at the majority of the work force in the year 2000 and beyond will be women, minorities, and there has to be some kind of program that you put

in place to help your future workers and future persons that will be involved in what you do.

And I think it is important that we look at helping you to help us to grow this country through its small businesses through the technical assistance, as well as the education, and the other outreach programs that I am here to call upon each of you to look at and work with me on, as I am hell bent to empower small businesses during my course as ranking member.

Mr. Moe, is it? Okay.

Mr. MOE. First of all, I am in research at Merrill Lynch. I am not an investment banker or involved with policy. In any event, the key responsibility that we have in research is to be looking at identifying attractive companies for our clients that will do well for them from investing capital in those enterprises.

From that, just an observation. What matters for how well these organizations do, going back to my original testimony, it is the earnings growth and success of a company which leads to the performance of the stock.

And so first and foremost, it is completely indifferent. It is the success of the company which matters. An observation I would have would be that, from a female standpoint, female CEO, female run business, back when I started in this business, that was sort of a noteworthy, unique situation.

Today it is so common for many of the companies that we see that we think are extremely attractive companies. You just do not think twice about it, or at least we do not because we see it so often.

So anyway, just the punch line—

Ms. MILLENDER-McDONALD. Well, let me ask you, what is your definition of “attractive business” or “attractive company?”

Mr. MOE. Attractive company is one that can grow their revenue and earnings at a very high rate for a very long time, has a sustainable and competitive advantage, has a claim to fame to their business, and something that ultimately will continue to be successful for the foreseeable future.

Ms. MILLENDER-McDONALD. And do you see a lot of female businesses in this attractive business mode?

Mr. MOE. Yes, we have significant involvement with a number—as I just think about it off the top of my head, a number of companies are led by female CEO executives.

Ms. MILLENDER-McDONALD. I would like to have you do a report back to me, if you will, on those companies that are female and minorities who fit your mode of attractive businesses.

Mr. MOE. Okay.

Ms. MILLENDER-McDONALD. Thank you.

Mr. Ellison.

Mr. ELLISON. Yes, good morning, Congresswoman McDonald.

I think that your question is a very good question. At the same time, I think the right—first question would be what has your—or what is your entity doing to look at itself internally in order to roll out any successful programs.

Because before we can begin to talk about programs, before we can begin to do town hall meetings, we have to do self examinations. And in those examinations, that is where we begin to come

up with the right solutions. Again, I think that that is a very good question.

You were not here when I talked about the importance of rolling out diversity as far as town hall meetings and as far as outreach. Before I get into what we do at the Wharton SBDC, I had mentioned that one of our clients, Next Step Magazine, talks specifically about diversity.

In my opinion, I think that every Merrill Lynch office, every SEC office, every NASDAQ office, every SBA office should have a copy of this magazine. And I will leave this here for you.

Ms. MILLENDER-MCDONALD. Give them each one.

Mr. ELLISON. Okay, sure.

Ms. MILLENDER-MCDONALD. And give me one.

Mr. ELLISON. I will leave that for you.

Now, back to answering your question specifically. The Wharton Small Business Development Center is located in west Philadelphia. And west Philadelphia's population is primarily—it is about 90%, 95% African-American. Temple, which is also in Philadelphia, is located in north Philadelphia, and the population there is—well, that is close to almost 100% African-American.

Also there is a large Hispanic community in north Philadelphia. Both Temple and Wharton's SBDCs, we have outreaches specifically to those groups. There is an incubator in west Philadelphia. It is titled "The Enterprise Center."

It is named after the late Secretary of Commerce, Ronald H. Brown. That was a birth of the Wharton SBDC back in 1990 and it grows minority businesses. And in fact, it has several successes. It is also located at the same building that the American Bandstand Theater was back in the 1950s, and I am sure no one here remembers that because of—

[Laughter.]

Ms. MILLENDER-MCDONALD. I take the fifth on that one.

I would be interested in that model that you have just mentioned to try to make it a prototype or even go to the SBA to look at that, becoming a prototype for those companies that are trying to get up from the foot range to get to expansion and growth.

Because we do recognize that the majority of the workers that are hired by business people are that of—are women and minority-owned businesses. And I should say most of the minority workers are hired by women-owned businesses and minority-owned businesses.

And so we have got to grow those because that is your—those are the future workers of tomorrow in this country. And if you do not grow them and if you do not have technical assistance programs, then you are going to lose out a lot, all of you, if you do not have that in place.

Mr. Dankberg.

Mr. ELLISON. I would like to add to your comment. Traditionally, society and large corporations, as well as small corporations, have ignored the various diverse markets. And not just ethnic diversity, but also women—

Ms. MILLENDER-MCDONALD. Gender, yes.

Mr. ELLISON [continuing]. That dimension. Let's take the African-American community. The spending power is between \$400

and \$500 billion dollars. Hispanic Americans spend between \$200 and \$300 and close to \$400 billion dollars. People with disabilities spend over \$100 million dollars.

Another community that is, you know, not part of our—not part of your question is the gay and lesbian community, and they spend about \$600 billion dollars a year. I say that to underscore the point that there is a business reason for corporations, small entities as well as the SEC, to develop programs for those various groups.

Ms. MILLENDER-MCDONALD. I think it is imperative that they do that because the future dictates that those will be the majority of persons in this nation and globally as well.

Mr. Dankberg, is it?

Mr. DANKBERG. Dankberg, yes.

Well, we are a consumer of capital as opposed to a source of capital, so I'm going to get off a little bit easy here.

Ms. MILLENDER-MCDONALD. I looked down at your name and saw what you represent. Yeah, that is right.

Mr. DANKBERG. But I would like to give just one perspective, just from the point of view of someone that started with a very, very small company, three people, and grew it up to one that became public.

And that is when you are a public company, you have two different problems. They are related, but they are definitely different. One is growing your business just from a perspective of sales and revenue. The other one is making your stock price go up to make it be a good investment.

And when you are a private company, it is pretty obvious how those things are related. You negotiate with private investors. And if your company is bigger and growing faster, it is pretty clear why you are worth more.

As a public company, there is a lot of effort involved in communication with potential investors about why your company is worth more even if it is growing at a high rate because public investors—and the whole objective is to have a very liquid capital market which lets capital flow very quickly from companies that may be doing well to companies that might be doing better.

And so for us, being private for quite a while is kind of like being in the minor leagues. And we got a chance to get better at the part about growing the company and just focus on how do we make this company work. And then, at the time we went public, we had kind of a machine that knew how to do that.

And the entrepreneur in myself could spend a lot more time on the fact of educating investors about—even though we had done well in the past, why—you know, why will we do well in the future and why we are a good investment.

And I would not minimize how much time is involved—and effort is involved, in that. And I think that really the kinds of SBDC programs that Mr. Ellison is talking about are a really good incubation stage for any company, whether it is minority-owned, women-owned or has all the advantages in the world just to get to develop that type of infrastructure before going public.

That is just kind of a—you know, kind of a battle tested version of that.

Ms. MILLENDER-MCDONALD. Well, we recognize incubation concepts are really great concepts and programs and projects to help small businesses.

Mr. Ellison, you remind me of my nephew who finished the Wharton School of Business MBA, so we are proud to see you and all of you here today.

Thank you, Mr. Chairman.

Mr. ELLISON. Excuse me. I would just like to add one more point to your question. Next month, November, the dates between the 7th and the 13th, is National Diversity Week and I think it is something that it is not too late for members of the distinguished panel here, as well as the subcommittee, to get involved in.

Ms. MILLENDER-MCDONALD. I think that is a great idea and I would like to have Mr. Lane, Mr. Wall, Mr. Moe and the Chairman to talk with us about that.

Thank you so much, Mr. Chairman.

Chairman BARTLETT. Thank you very much.

I would just like to reemphasize the increasing role of women-owned small businesses. They are growing at twice the rate of the general business community. Women-owned small businesses have a lower bankruptcy failure rate than male-owned small businesses. Bankers haven't figured that out yet because access to capital is still a major problem for women-owned businesses.

Women-owned small businesses are better employers. And I would expect that. Women are different than men. We are having trouble getting the military to understand that, but women are different than men. And those differences, I think, make them better employers.

And they are better corporate citizens for exactly the same reasons. They are more compassionate, they are more caring, and that makes them better employers and it makes them better corporate citizens.

Mr. Wall has to leave us shortly and I just had one quick question to ask him.

There are many of our companies now that—whose stocks are growing most rapidly in value who are making no profits. At what point does the investor—you know, this growth versus profits thing, at some point an investor is going to have to say some time there has to be a profit.

When does that happen? This is quite a new phenomenon, is it not, in the marketplace that you can have a rapidly growing business with the stocks increasing in value and you are not making any money?

Mr. WALL. Right. Well, Chairman Bartlett, the purchasing and demand of stocks based on future earnings is what we have been seeing, and that is being driven by this new economy that we heard about. And quite frankly, we build the markets. I am going to yield to my distinguished panelist on my left here to answer that question because this is what he does as a researcher.

Chairman BARTLETT. Okay.

Mr. MOE. Well, and what investors are paying for is the expectation of future earnings. I mean, profitless prosperity cannot go on forever. But what investors are doing is extrapolating this growth against a market opportunity and making interpretation analysis

what a likely margin potential would be out into the future and discount that back to today, and that is where the stock prices come from.

Realistically, if you do that math, and it is always difficult to be making analysis about futures, but typically even with the stock prices doing what they have done without companies that are making money today, if in fact you are right about those future numbers, typically it would even support higher prices.

Where that argument falls short is there are so many variables in terms of making that future analysis that you are going to be wrong a fair amount. And in those cases, there will be significant corrections in the stocks in which they can afford those benefits of being paid for futures.

Mr. WALL. And we are already seeing that in the internet industry. There are many stocks that are well, well below what their original pricing was because now it appears that those anticipated earnings that we all paid for that stock price aren't going to be there. And as a result, they are coming back.

Chairman BARTLETT. So we are already seeing investors making that choice?

Mr. WALL. That is correct.

Chairman BARTLETT. Okay.

Mr. Moe, you mentioned stock ownership in companies attracting employees. Do you have any evidence that companies that offer meaningful stock shares to their employees do better in the market? I would think the employees would be better motivated if they are part owners and that we might see these companies performing better.

Mr. MOE. I mean, capitalism works. Point of fact, we do not have that data. I think that would be a great study to conduct. I think also, and this is more anecdotal, but in San Francisco where I live, it is hard to imagine a new company that did not offer stock ownership to virtually all of their employees because otherwise you would never be able to get the best and the most talented people which are truly the drivers of these new businesses.

Chairman BARTLETT. And keep them.

Mr. MOE. So it is all about attracting and retaining people.

Chairman BARTLETT. Mr. Ellison, you mentioned the role that SBDC centers play in helping the business assemble the IPO team, and you also mentioned the cost as one of the barriers. I notice that cost runs somewhere eight, nine percent for smaller, \$25 to \$50 million dollar offerings.

When you look at the elements of that cost, I do not see any meaningful way to decrease that cost. And I wonder if you have any thoughts. And it appears to me that that is a barrier that is just going to be there.

Mr. ELLISON. That is a very good question. In my opinion, there is a solution to that. Part of that cost is in the corporate clean up phase.

And what that means is most private companies just have to admit there are certain things about how they run their operations that is embarrassing if they are trying to go public, or it does not really maintain high confidence among the public investor community.

Now what typically happens is they will work with their IPO team that comprises the attorneys, the accountants, advisors, and that is part of where the cost comes in.

The SBDC's role is to prevent those companies from really getting to the point or to start early so that they can start the thinking process of okay, let me establish my business and let me set up my structure, let me establish my systems so that if and when I want to go public, everything will be in place.

It is not going to eliminate it, but it can reduce it. And it also can reduce the continual distractions.

Chairman BARTLETT. I have the Nasdaq information booklet here and they estimate the cost of going public for a \$25 million and \$50 million dollar offering, and about three-fourths of all of those costs are in underwriting discounts and commissions.

Is that soft? Can we reduce that any?

Mr. WALL. Well, actually—no, those are good numbers.

Chairman BARTLETT. Those are good numbers?

Mr. WALL. Yes, they are.

Chairman BARTLETT. That is about three-fourths of the total cost.

Mr. WALL. That is correct. And yet there is a change. And technology is bringing that change. As we have seen a change in the commission structure and the execution costs for regular transactions being decreased, we are starting to see the same thing happen in the underwriting distribution.

There are underwritings now being distributed through the World Wide Web where traditional cost to the underwriter has come down almost by 50%. We suspect as this part of the market also grows, that will come down even further.

So it will open, we hope, more opportunity for smaller businesses to come in and participate in the IPO process.

Mr. ELLISON. I would like to add something. That half million dollar figure excludes the commissions. Yes, commissions are expensive; but if you really look at it, it is not up front costs or up front money that an entrepreneur has to bear in the process.

Chairman BARTLETT. So your half million dollars—as a matter of fact, it is about \$2.3 million for \$25 million and about \$4.1 million total start up cost for \$50 million?

Mr. ELLISON. Correct.

Chairman BARTLETT. So your half million was——

Mr. ELLISON. Half million is something that you are going to incur if you sell one share or if you sell all your shares.

Chairman BARTLETT. Okay.

Mr. DANKBERG. Or no shares.

Mr. ELLISON. Or no shares.

Mr. LANE. And Mr. Chairman, if I could add to——

Chairman BARTLETT. Yes.

Mr. LANE. The advent of the internet has also created a real opportunity for what are called direct public offerings. And this is something that small businesses are trying to do. And they try and sell without an underwriter.

They sell their securities directly on the internet. There have been some that have been in the newspaper. It is not a hugely growing phenomena, but it is something that many companies are



exploring. They have their own newsletters and such on how to do direct public offerings.

On the one hand, it cuts costs considerably. On the other hand, you lose the benefit of having an underwriter who can go find investors for you rather than just posting notices on the internet. And underwriters also add to the process of doing due diligence on a company and kicking the tires and looking under the hood.

And so there is the question of will the cost of capital really be lower? Yes, you cut out the underwriter discount. On the other hand, are investors as willing to invest in your company? And are they willing to pay the same price they would have paid if you had an underwriter?

And so that is—the story has not been written yet. We have to watch and see how this unfolds.

Chairman BARTLETT. Thank you.

Mr. Dankberg, I think you mentioned that—if I remember the numbers, you mentioned what your sales were and—you have a roughly 10% profit?

Mr. DANKBERG. Roughly, right, yes.

Chairman BARTLETT. That is pretty good.

Mr. DANKBERG. We are happy with it.

Chairman BARTLETT. Your stock ought to be doing very well. Congratulations.

Mr. DANKBERG. Thank you.

Chairman BARTLETT. Mr. Davis.

Mr. DAVIS. Well, the only thing I will say is that the purpose of selling money, of course, is to make money. I mean, most people who sell it, they sell it for the purpose of making additional money. But it seems to me that what we are really saying is that knowledge is a tremendous factor in terms of the ability for companies to move to another level.

And that is why I really appreciate the efforts of the SEC, the whole concept of town hall providing information, the work that the Small Business Development Centers do. I mean all of this, I think, really becomes very key in helping people reach the point where they can make that critical determination.

And my last word really was is there a critical moment in the life of a small business where one might begin to seriously look at whether or not they ought to go public? Is there a critical time in the position of a company when you make that determination?

Mr. MOE. Well, I will make just a comment. I mean, with the Dow over 10,000 and significant demand imbalance for equities and continued investor interest in IPOs and new offerings, it is often not the case that a company go public.

Many can, however the question is, should you go public? The issue that I think we see and I think is fundamental; being public is a long time. You know, the IPO's exciting but then you have to live with the consequences of being a public company and being able to respond accordingly.

The reality is, if a company does not have the proper management team to be able to execute as a public company must, it does not have the type of predictability to its business to be able to execute as a public company, it does not have its business opportunity crystallized, it really is a mistake to go public.

Having said that, you could see a company that has those—has clarity and should go public, you know, that is not making money. It is not necessarily making money, it is not necessarily the critical determining factor. And there could be a company that is a billion dollars in revenue that should never go public for a zillion different reasons.

To answer your question, there is a magic moment, I think the moment is when you are ready to perform as a public company, and being a public company is a smart, strategic thing both to attract and retain key people in your marketplace and how you continue to build your brand, etc.

Mr. WALL. It may be interesting to note that this year 20% of the applications that we received to list on the national market system were withdrawn or denied. And over 60% of those for small cap were either withdrawn or denied.

I think the managers going through that process come to a realization of what going public truly means and what they will need to do to have a successful public company. Because obviously, if they are not going to meet those expectations of me, the investor who is giving my money, I am going to take that money back. Sometimes that just does not happen until you go through this type of process. I think the statistics are quite devastating when you think of it, 60% withdrawing from the public process in small cap.

Mr. DANKBERG. I can tell you from a small businessman's perspective even though going public is difficult, it is actually easier to go public than to undo it afterwards. And so you have to keep that in mind. I mean, and we are a company that has tripled in three years since we have gone public, so it is not as if we regret what we have done.

But you have to think about it carefully. And then the phrasing of going public as being the end of the rainbow is a little bit misleading. If you have a company and you want the end of the rainbow, you are better off selling the company.

Because going public is really the start of a road that is actually, in a lot of ways, much more difficult than being private. And if you look at it that way, it is a new path with a lot more opportunity, that is the right mind set. But it is a long term commitment.

Ms. MILLENDER-MCDONALD. And I think this is why a lot of minority businesses are very reluctant to going public because of the risk factors that you have just outlined. It is so critical to them.

Mr. DAVIS. Seems to me you are saying it is kind of like getting married.

[Laughter.]

Ms. MILLENDER-MCDONALD. With that, Mr. Chairman, I guess I will excuse myself.

[Laughter.]

I am glad he is cleaning this one up.

Mr. ELLISON. That is a good analogy.

Mr. DAVIS. If not, then you have got a problem.

Ms. MILLENDER-MCDONALD. Mr. Chairman, may I just make one statement though. I would like to seriously get, if I may, to have a hearing in my district on this very topic and would like to invite Mr. Lane—in fact, all of those folks who are out here now.

I think you had a great panel and they have really had very provocative information to us. And thank you again so much. I would like to have that hearing, and I am going public with that request.

[Laughter.]

Chairman BARTLETT. Well, our district too would like to have that hearing, so you have got two offers. And I suspect that Chicago is big enough to welcome you a second time.

I want to thank my colleagues for joining us for this hearing.

And my very special thanks to the members of the panel. You have done a great job. I believe that the small business community will be better advised as a result of this hearing as to what their opportunities are for going public.

Thank you all very much, and the meeting stands in adjournment.

[Whereupon, the proceedings were adjourned at 11:49 a.m.]

# APPENDIX

ROSCOE BARTLETT, MARYLAND  
CHAIRMAN

DANNY K. DAVIS, ILLINOIS  
RANKING MEMBER

Congress of the United States  
House of Representatives  
100th Congress  
Committee on Small Business  
Subcommittee on Government Programs and Oversight  
B-305 Rayburn House Office Building  
Washington, DC 20515-9516

## OPENING STATEMENT

CHAIRMAN ROSCOE G. BARTLETT  
SUBCOMMITTEE ON GOVERNMENT PROGRAMS  
AND OVERSIGHT  
HOUSE COMMITTEE ON SMALL BUSINESS

Good morning. Let me call the Subcommittee to order. It is a pleasure to welcome you to this hearing of the Subcommittee on Government Programs and Oversight of the House Small Business Committee. I would especially like to thank those of you that have traveled some distance to participate in this hearing.

The purpose of the hearing is to provide information to small businesses concerning the process of "going public" and selling the securities of a corporation on a stock exchange. For many small businesses, or a company that has begun as a small business, "going public" can be the end of the rainbow - the culmination of years of hard work and substantial monetary reward for the owners of the business.

Few entrepreneurs going into business have not dreamed of going public and being a company listed on a stock exchange. This incentive may well be a major factor in the formation of business enterprises and contribute to continued economic growth. As a Nation of opportunity, innovation, and invention, business formation should be encouraged.

A number of factors need to be considered by businesses considering whether to “go public.” It is anticipated that this hearing will provide some of the answers to those questions. The panel of witnesses that are invited to this hearing were carefully selected for their recognized expertise in the process of listing and selling securities on a public exchange.

Your testimony and the testimony of the other panel members is a vital public service to businesses, both large and small, throughout this country. The Committee is hoping to have as broad a distribution of the testimony, in electronic and hard-copy form, as is possible.

Both public and private assistance is available to businesses considering “going public” and it is hoped that the hearing will provide a public forum for communicating those sources of information to businesses. The Committee is always open to suggestions of ways how to improve or expand, where needed, federally funded information sources and assistance. The Committee would also appreciate new legislative proposals.

The creation and expansion of small businesses are the fuel which has generated and is sustaining our current economic growth. America is the most prosperous nation in the world because our stock market encourages the creation of wealth by efficiently directing capital from individual investors to reward both the investors as well as the entrepreneurs, inventors, and innovators who produce and distribute new and better products and services to meet people’s needs.

Again, welcome to our participants and guests. I look forward to hearing your testimony on this most important subject.



**TESTIMONY OF**

**BRIAN J. LANE, DIRECTOR  
DIVISION OF CORPORATION FINANCE  
U.S. SECURITIES AND EXCHANGE COMMISSION**

**PROVIDING INFORMATION TO SMALL BUSINESSES  
CONCERNING THE PROCESS OF "GOING PUBLIC"**

**BEFORE THE SUBCOMMITTEE ON GOVERNMENT  
PROGRAMS AND OVERSIGHT  
COMMITTEE ON SMALL BUSINESS**

**U.S. HOUSE OF REPRESENTATIVES**

**OCTOBER 14, 1999**

U. S. Securities and Exchange Commission  
450 Fifth Street, N.W.  
Washington, D.C. 20549

Mr. Chairman, Members of the Subcommittee:

My name is Brian Lane. I am the director of the Division of Corporation Finance of the Securities and Exchange Commission ("SEC" or "Commission"). The Division of Corporation Finance, through its Small Business Office, is at the forefront of the Commission's efforts to help small businesses raise money from the public and comply with the federal securities laws. I am very pleased to have the opportunity today to testify on behalf of the Commission and share information about our efforts in this area.

**I. THE COMMISSION'S SMALL BUSINESS INITIATIVES**

The Commission understands the importance of small business to the U.S. economy, and is committed to addressing the special concerns of small business. Over the years, the SEC has improved communications between the SEC and the small business community.

In its first Annual Report, in 1935, the Commission stated that it would provide informal guidance to the securities industry, both to foster improved compliance and to establish a spirit of cooperation with the public.<sup>1</sup> This spirit continues to play an important role in the Commission's programs. The SEC works in partnership with industry, self-regulatory organizations and the public to protect investors and bolster market confidence while not burdening legitimate capital formation. Our efforts specifically to aid small business fall into two broad categories: (1) cutting through red tape and providing compliance assistance, and (2) reviewing existing and proposed rules for ways to reduce burdens on small business.

## II. CUTTING THROUGH RED TAPE AND PROVIDING COMPLIANCE ASSISTANCE

- The SEC's Small Business Office: The Office, which was created in 1979 and expanded significantly in 1996, serves as a liaison between the Commission and small business. The Office now directs the Commission's small business rulemaking initiatives, interpretations, and uniform review of disclosure in small business filings.
- The SEC's Annual Government-Small Business Forum: Begun in 1982, this forum is the only annual federal government-sponsored national small business gathering that offers small business the chance to tell federal and state government officials how the laws, rules and regulations impact their ability to raise capital. This year's Forum was held in Washington, D.C. while next year's Forum will be in Texas.
- SEC Small Business Town Hall Meetings: The Commission has held 13 "town hall" meetings with small businesses around the country since September 1996. The most recent meeting was in Kansas City, Missouri in June of this year; the next scheduled meeting is in Albuquerque, New Mexico on October 21. These meetings are designed to educate small businesses about the many opportunities to raise capital. They also help the Commission learn more about the problems small businesses face in raising capital, and design programs that meet small businesses' needs while protecting investors.
- Working Relationship with the U.S. Small Business Administration: The staff works closely with the U.S. Small Business Administration and their Office of Advocacy on all aspects of small business capital formation and other regulatory matters affecting small entities. We have



jointly worked on the organization of our small business town halls and annual Government-Business Forum.

- SEC Web Site ([www.sec.gov](http://www.sec.gov)): The Commission operates a web site with special pages targeted to small businesses. These pages provide access to one of our most popular publications entitled “Q & A -- Small Business and the SEC-- A guide to help you understand how to raise capital and comply with the federal securities laws,” proposed new regulations affecting small businesses, and information about specific issues of current interest. Copies of rules, forms and regulations relating to small businesses were recently added to our web site.
- Public Inquiries: Each major office of the Commission has staff who are available to answer questions from the public, including small businesses, by telephone and e-mail.

These programs have been remarkably successful. When the Small Business Regulatory Enforcement Fairness Act (“SBREFA”)<sup>2</sup> was passed, notably, Congress recognized the Commission as one of several agencies which “already have established successful programs to provide compliance assistance.”<sup>3</sup>

### **III. REVIEWING EXISTING AND PROPOSED RULES FOR WAYS TO REDUCE BURDENS ON SMALL BUSINESS**

- Plain English: Nothing is more frustrating than trying to comply with regulations that are difficult to understand because they are written in jargon or legalese. The Commission has begun efforts to issue regulations and releases in “plain English.” We also demand the same plain English from companies raising capital in public markets. People are more likely to invest their money in companies that clearly and simply describe what they are going to do with it.

- **Small Business Initiatives:** Beginning in 1992, the SEC launched a major regulatory initiative to make raising capital easier for small businesses. Rule changes arising out of this initiative simplified the process for registering securities of small business issuers for public sale; increased the dollar threshold for exemptions permitting unregistered public and private sales of securities; and simplified ongoing periodic reporting requirements of registered small issuers.

In 1996 Congress enacted SBREFA, which requires agencies to publish small business compliance guides, to establish programs of informal guidance for small businesses, and to establish policies or programs to reduce or waive penalties for small entities. As mentioned above, the Commission developed compliance guides for small business such as the pamphlet -- "Q&A: Small Business & the SEC" and the staff of each of the Commission's operational units provide informal advice over the telephone to members of the public. The Commission has an effective penalty-reduction policy for small businesses, providing them with the opportunity to demonstrate an inability to pay a penalty. Such penalties have frequently been lowered or not assessed in Commission proceedings based on a showing of inability to pay.

#### **IV. FEDERAL SECURITIES LAWS REQUIREMENTS FOR "GOING PUBLIC"**

"Going public" in its common meaning is the offering of equity interests in a company to members of the public. How a company solicits interests in an opportunity of this nature can take many different forms. Besides simply selling its securities to the public -- which is the most commonly thought of way -- a company may, for example, decide to become a reporting company under the federal securities laws and provide its existing shareholders with the opportunity of

selling their shares in a public market. Regardless of the method chosen, the provisions of the securities laws, both state and federal must be considered.

The Securities Act of 1933 ("Securities Act") requires companies to register their securities for sale to the public unless an exemption is available. Some securities -- such as bank securities, and transactions -- such as intrastate ones, are exempted from registration. The Commission has developed several exemptions designed for "small issues."<sup>4</sup> For example, the Commission developed Rule 504 of Regulation D, the "seed capital" rule, which provides an exemption from Securities Act registration for limited offerings of securities of up to \$1 million in a 12-month period (as long as the issuer is not an investment company under the Investment Company Act of 1940, a reporting company under the Exchange Act or a "blank check" issuer, that is, a company in the business of locating an unidentified business or assets.) While either public or private offerings are permitted under Rule 504, public offerings must be registered under a state securities registration provision requiring delivery of a disclosure document to prospective investors before sale,<sup>5</sup> or be made under a state law exemption that limits sales to "accredited investors." The company need only file a Form D - a simple notification -with the SEC. Securities issued in a public offering under Rule 504 are freely tradable securities when held by a non-affiliate of the issuer.

Regulation A permits non-reporting U.S. or Canadian issuers to offer and sell to the public up to \$5 million worth of securities in a 12-month period, without registration under the Securities Act (secondary offerings are restricted to no more than \$1.5 million in the 12-month period). "Blank check" companies, investment companies, certain oil and gas/mineral rights issuers and disqualified persons are ineligible to use the exemption. Regulation A requires the

company to prepare and file a disclosure document with the SEC and provide the offering circular to prospective purchasers. The required disclosure is less burdensome than that required in a full registration statement. For example, companies can use unaudited financial statements, prepared in accordance with U.S. generally accepted accounting principles. Advantages of using Regulation A include: avoiding strict Securities Act Section 11 liability; issuing freely tradable securities; and avoiding periodic and annual reporting obligations under the Exchange Act.

Regulation A also permits companies to gauge investors' interest, or "test the waters," before they incur the expense of preparing and distributing the required disclosure documents. The rule also permits companies to use written solicitation materials (so-called "free-writing") before filing the required disclosure documents, as long as they are truthful. "Testing the waters" is prohibited after the filing of the Regulation A offering statement. No sales may be effectuated until 20 days after the last publication of the "testing the waters" materials.

The exemptions provided by Regulations A and D provide that a company that made a good faith attempt to comply with all of the requirements of the exemption can defeat certain claims made by investors (but not a regulator) as long as the non-compliance item was not intended to protect the complaining party and the violation was not material to the offering as a whole. (Issuer eligibility, filing requirements and dollar limits are, however, always material.)

To simplify registration of securities under the Securities Act and periodic and annual reporting under the Exchange Act for small businesses, the Commission developed the concept of the "small business issuer". The small business issuer is one organized in the U.S. or Canada with revenues of less than \$25 million in its most recent fiscal year and whose outstanding publicly held stock is worth no more than \$25 million. About 3,000 public companies meet this test today.<sup>6</sup>

The Commission's Regulation S-B contains the core disclosure items for both Securities Act registration and Exchange Act registration and reporting purposes by small business issuers. Regulation S-B uses simple and non-legalistic language. In addition, small business issuers need to file certified GAAP financial statements, for only two rather than the three years required by larger issuers.

The Commission has significantly simplified the obligation of small business issuers to disclose certain accounting information. For example, Regulation S-B was the first system to provide for an automatic waiver from the audited financial statements requirements of significant acquired businesses.<sup>7</sup> The experiment with small business issuers was so successful, the Commission now uses these tests for all companies.

Small business issuers may also do an initial public offering in the first quarter of their fiscal year without having to wait for the completion of the audit for the preceding year. In addition, selected financial data and supplementary financial information disclosure required by Regulation S-K -- the comparable regulation for larger issuers -- is not required.

Where a small business issuer has no operating revenues in each of the preceding three fiscal years, the company need only disclose its business plan, instead of the more detailed management's discussion and analysis.

The Commission also has developed special, simplified Securities Act registration forms for small business issuers. When these companies only offer up to \$10 million worth of securities in any 12-month period, they may use Form SB-1. The form permits a company to use a question-and-answer format or the traditional Regulation A offering circular format for required

disclosure. Unlike Regulation A filings, however, Form SB-1 requires audited financial statements.

Small business issuers may register an unlimited dollar amount of securities using Form SB-2 under the Securities Act. The form may be used not only for initial public offerings but any subsequent offering for as long as the issuer is a small business issuer.<sup>8</sup>

Regulation S-B also contains the disclosure items for Exchange Act Forms 10-SB, 10-QSB and 10-KSB, which are used for registration, quarterly and annual reporting, respectively, by small business issuers in our continuing disclosure system. These forms also contain instructions that are designed specifically for small business issuers transitioning from non-reporting to reporting status and offer both the question-and-answer format and the traditional disclosure format from Regulation A. Transitioning small business issuers filing on Form 10-SB may provide audited financial statements for just the latest fiscal year unless two years worth of financial statements are available. A transitioning issuer would continue to satisfy its reporting obligation with this type of information until the issuer:

- registers more than \$10 million for sale in a single 12-month period;
- elects to use the regular small business issuer disclosure system; or
- is no longer a small business issuer.

#### **V. PENDING COMMISSION PROPOSALS FOR SMALL BUSINESS**

The process of “going public” imposes significant restrictions on the way the company selling its securities can communicate with those it wants to sell them to. Under the Securities Act, the “statutory prospectus” must accompany or precede any other writing -- all such writings must be consistent with that prospectus. Oral communications are permitted but they must be

truthful and consistent with the prospectus. This process minimizes high pressure sales tactics and permits investors to consider the investment using the prospectus as the basic, if not most essential guide. The Commission has proposed to permit more freedom in communications with investors. These proposals carefully consider investor needs and protections. Small business issuers could enjoy significant relief from some of these communication restrictions during registration for offerings to “qualified institutional buyers” and to existing securityholders, among other specific offerings.<sup>9</sup>

Under proposed Rule 167, all communications made by or on behalf of any issuer that take place during a specified period before it files a registration statement would not violate these restrictions on communications. Generally, free communications would be allowed more than 30 days before filing a registration statement. This approach would apply to small business issuers that file registration statements on Forms SB-1 and SB-2. Under this proposal, the issuer, underwriter and participating dealer must take all reasonable steps within their control to prevent further distribution or re-publication of the communication during the 30 day period immediately before the registration statement is filed.

In a second proposal, companies could discuss factual business information at any time. “Factual business communications” would include, for example, advertisement of the issuer’s products or services; factual business or financial developments with respect to the issuer; and dividend notices. Factual business communications would not include information about the registered offering itself or forward-looking information.

In addition to factual business information, reporting companies could continue to publish regularly released forward-looking information. In order to come within this safe harbor, the

issuer must have customarily released this type of information in its ordinary course of business for the last two fiscal years (and any portion of a fiscal year) immediately before the communication. The time, manner and form in which the information is released must be consistent with past practice.

In order to facilitate effective communication after a registration statement is filed, companies would be allowed to make offers and disseminate offering information in any form, without each communication having to be a "statutory prospectus." This proposal would permit issuers to prepare presentations and disclose information in a variety of formats, available to all investors. Through these changes, we seek to have sellers augment the information available to investors and thereby enhance investors' knowledge of the company and its securities.

Issuers are sometimes faced with difficult decisions about unregistered offerings that are properly exempted from the registration requirements of the Securities Act. This difficulty may affect the smallest of issuers most. We have made a number of proposals in this area.

Generally, private offerings do not need to be registered with the Commission. Sometimes, issuers change their minds about how they want to raise capital -- publicly or privately. Certain rules are in place, so that investors are protected and do not participate in offerings for which they are not qualified. An unregistered private offering that occurs before or after a registered offering may raise "integration" issues under the Securities Act. "Integration" occurs when two or more apparently separate, exempt securities transactions are in fact one offering that should be registered. For example, if a private offering is considered part of an earlier or subsequent registered offering, the exemption for the private offering could be lost because there might be no reason for the investors in the so-called private offering not to have the



same protections the purchasers in the registered one got. In such a case, the issuer could be liable to investors for the purchase price they paid.

We adopted Securities Act Rule 152, which provides a safe harbor from integration when an issuer makes a non-public offering exempted under Securities Act Section 4(2) and then decides to make a public offering and/or file a registration statement. Many questions have been raised about Rule 152 over the years. Our proposal significantly revises the safe harbor to clarify and broaden it.

Under the proposal, an issuer could under specific conditions abandon an ongoing private offering and then file a Securities Act registration statement at any time, before it files the registration statement. If the issuer had offered the securities in the private offering to a person ineligible to purchase the securities, it also must wait at least 30 days from abandoning the private offering before filing the registration statement. The proposed conditions are designed to ensure that offerees in the private offering are treated the same as offerees and purchasers in the registered offering.

When an issuer decides to switch from a public offering to a private one, a different analysis and set of problems result. The filing of a registration statement for a specific securities offering constitutes a general solicitation for that offering. Thus, when an issuer wishes to convert an offering begun as a registered public offering into a private offering, or follow it soon after abandonment with a private offering, the non-public or limited offering exemptions may not be available. Issuers currently in this situation must wait a full six months to be certain that the public offering under the registration statement would not be integrated with the private offering. We proposed to expand Rule 152 to shorten or eliminate that wait.

Under our proposal an issuer could more easily withdraw or abandon a Securities Act registration statement and then conduct an unregistered private offering if certain conditions are met. Additional conditions are applied to any issuer that starts the private offering within 30 days after the public offering is withdrawn or abandoned. In that case, the issuer and any underwriter also must agree to accept liability for material misstatements or omissions in the offering documents used in the private offering under the standards of Section 11 and Section 12(a)(2) of the Securities Act.

This proposal may be particularly attractive to small business. If the issuer discovers limited interest in its securities, it may withdraw its public offering and shortly thereafter sell securities in a private offering to persons who were solicited in the public offering. The small issuer will have incurred significant costs and time to prepare and file its registration statement. If it discovers weak demand for its securities after filing the registration statement, it will be able to switch to a private offering, sell securities to persons solicited in the public offering, and obtain some amount of funding.

#### IV. CONCLUSION

The Commission has long been sensitive to the needs of small business in their capital-raising activities. It must also protect investors. The Commission has always strived to keep the balance set between these two, apparently competing goals. The two, in fact, complement each other: the public is likely to invest more if they believe their interests are protected. The Commission's small business disclosure and exemptive system currently in place and as proposed to be revised, strikes this balance. It has been a pleasure to take this opportunity to put it on display.

<sup>1</sup> SEC, 1 Annual Report 9-10 (1935).

<sup>2</sup> Pub. L. No. 104-122, title II, 110 Stat. 857 to 874 (Mar. 29, 1996), codified at 15 U. S. C. 657, 5 U. S. C. 801-808.

<sup>3</sup> "Small Business Regulatory Enforcement Act -- Joint Managers' Statement of Legislative History and Congressional Intent," 142 Cong. Rec. S3234, S3243 (daily ed. Mar. 29, 1996).

<sup>4</sup> A number of Commission exemptions created under this provision for small businesses are not really suitable for "going public." For example, under Rule 505 of Regulation D, an issuer may undertake a limited private offering of its securities in an amount of up to \$5 million in a 12-month period. Purchasers must be accredited investors and sales may be made to an unlimited number of these persons, as well as to an additional 35 persons who do not need to be sophisticated investors. Non-accredited investors must be provided with disclosure that is comparable to that required in a registered transaction. Investment companies and certain disqualified persons are not allowed to use the exemption. Securities issued in a Rule 505 transaction are "restricted" as to resale for one year. A Form D notification is required to be filed with the Commission. Rule 505 is a coordinated exemption with the North American Securities Administrators Association Inc.'s Uniform Limited Offering Exemption ("ULOE"), which has been adopted by more than 30 states.

Rule 701 permits a non-reporting company to compensate its employees and others with company securities. The exemption was designed for small businesses and is particularly helpful to start-up companies that are strapped for cash. Under the exemption, any qualifying company may issue up to \$1 million worth of securities in a 12-month period. The rule provides formulas to determine whether a greater amount may be issued based upon the calculation of 15% of the company's assets or outstanding securities. If more than \$5 million worth of securities would be issued, the company must provide disclosure to the employee-investors.

<sup>5</sup> Form U-7 of the North American Securities Administrators Association (also referenced as ULOR or SCOR) is designed to satisfy the public offering requirement in Rule 504.

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- <sup>6</sup> The Commission has proposed to raise the revenue ceiling to \$50 million and eliminate the public float test. Our studies indicate that 1,100 more public companies would become eligible to use the small business disclosure system.
- <sup>7</sup> Where the acquisition(s) do not account for more than 20 percent of the issuer's total assets, the audited requirement is waived. Where the acquisition(s) does not account for more than 40 percent of the issuer's total assets, then an automatic waiver of one year's (the year preceding the latest fiscal year) worth of audited statements is granted. These waivers are only available if these financials are not readily available and any available unaudited statements are furnished.
- <sup>8</sup> The Commission has proposed to introduce incorporation by reference concepts into Form SB-2 for seasoned companies. Under the proposal, after two years of filing reports the small business issuer could refer to its Exchange Act reports for much of the information now contained in a Form SB-2 prospectus rather than reprinting it as presently is the case.
- We also have proposed a special small business form for business combination transaction, Form SB-3. This proposal would simplify and streamline the applicable disclosure requirements.
- Another proposal that would be beneficial to small business issuers contemplating the registration of their securities for public sale involves the ability to defer payment of the registration fee until shortly prior to effectiveness. By this technique, some savings could be had where an offering does not go forward or the amounts of securities offered become reduced subsequent to initial filing.
- <sup>9</sup> Other offerings include offerings of investment grade, non-convertible securities and market making transactions by broker-dealers affiliated with an issuer. There would be no pre-filing communications restrictions and free communications after filing a registration statement.



**Testimony**

**of**

**John T. Wall  
President and Chief Operating Officer  
Nasdaq-Amex International  
National Association of Securities Dealers, Inc.**

**before the  
Subcommittee on Government Programs and Oversight  
of the  
House Small Business Committee,  
on**

**Initial Public Offerings**

**October 14, 1999**

I am John Wall, President and Chief Operating Officer of Nasdaq-Amex International, a subsidiary of the National Association of Securities Dealers, Incorporated. The NASD would like to thank the Committee for this opportunity to testify on Initial Public Offerings (IPOs) in the US.

The Committee's invitation letter requested that we discuss the benefits associated with IPOs as well as the factors that businesses should bear in mind when considering an IPO. I will cover the benefits -- as well as the very important responsibilities -- involved in an IPO, but I believe that our main contribution to your hearing today will be to focus on 1) the role that the markets play in the IPO process and 2) what factors a company should consider when making the important decision of choosing a stock market on which to list their newly public company.

For those wishing a deeper discussion of the IPO process, I have included with my testimony a copy of Nasdaq's *Going Public*, which describes the IPO process in considerable detail.

### **The NASD**

Let me briefly outline the role of the NASD in the regulation and operation of our securities markets. Established under authority granted by the 1938 Maloney Act Amendments to the Securities Exchange Act of 1934, the NASD is the largest self-regulatory organization for the securities industry in the world. Virtually every broker-dealer in the U.S. that conducts a securities business with the public is required by law to be a member of the NASD. The NASD's membership comprises 5,600 securities firms that operate in excess of 75,000 branch offices and employ more than 600,000 registered securities professionals.

The NASD is the parent company of The Nasdaq Stock Market, Inc., the American Stock Exchange, and NASD Regulation, Inc. (NASDR). These wholly owned subsidiaries operate under the authority of the parent, which retains overall responsibility for ensuring that the organization's statutory and self-regulatory functions and obligations are fulfilled. The NASD is governed by a 33-member Board of Governors, a majority of whom are non-securities industry affiliated. Board members are drawn from leaders of industry, academia, and the public. Among many other responsibilities, the Board, through a series of standing and select committees, monitors trends in the industry and promulgates rules, guidelines, and policies to protect investors and ensure market integrity.

***NASD Regulation***

NASD Regulation is responsible for the registration, education, testing, and examination of member firms and their employees. In addition, it oversees and regulates our members' market-making activities and trading practices in securities, including those that are listed on The Nasdaq Stock Market and those that are not listed on any exchange.

NASDR carries out its mandate from its Washington headquarters and 14 district offices located in major cities throughout the country. Through close cooperation with federal and state authorities and other self-regulators, overlap and duplication is minimized, freeing governmental resources to focus on other areas of securities regulation.

NASDR has examination responsibilities for all of its 5,600 members. In addition to special cause investigations that address customer complaints and terminations of brokers for regulatory reasons, NASDR conducts a comprehensive routine cycle examination program.

NASDR plays a special role in the IPO review process. While the SEC focuses on disclosure when reviewing an issuer's prospectus, NASDR's Corporate Financing Department review focuses on the fairness of underwriting compensation, terms, and arrangements. NASDR review protects the issuing company by monitoring the relationship between the company and the underwriter to ensure that the amount of compensation paid to underwriters and the terms of the proposed distribution are fair and reasonable.

***The American Stock Exchange***

The American Stock Exchange is the nation's second largest floor-based securities exchange, listing 770 companies, and is the only U.S. securities exchange that is both a primary market for listed equity securities as well as a market for equity options, index options, and equity derivatives. Amex has been the primary innovator in structured derivative securities and index share securities.

***The Nasdaq Stock Market***

The Nasdaq Stock Market is the largest electronic, screen-based securities market in the world; currently capable of handling trading of up to four billion shares a day and can be scaled up, if necessary, to accommodate an eight billion share day. Founded in 1971, Nasdaq today accounts for more than one-half of all equity shares traded in the nation and, since January of this year, is also the largest stock market in the world in terms of dollar value of shares traded. Average

Nasdaq volume in 1999 is 985 million shares per day, with a peak of 1.4 billion shares reached on April 14, 1999. It lists the securities of 5,288 domestic and foreign companies, more than all other U.S. stock markets combined. There are over 70 million investors in Nasdaq companies. The Nasdaq Stock Market is made up of two distinct markets, the Nasdaq National Market and, for smaller companies, the Nasdaq SmallCap Market.

NASD members are the Nasdaq market makers who daily risk their capital to trade the companies' securities and give them the liquidity that investors require in order to buy and sell them. NASD members are also the investment bankers who put their capital at risk to bring companies public. NASD market making firms offer a wide range of financial services that include generating research reports on the stocks they trade, seeking buyers and sellers through retail networks and institutional sales representatives, and advising companies on initial and secondary public offerings and other investment transactions.

#### ***Nasdaq IPOs***

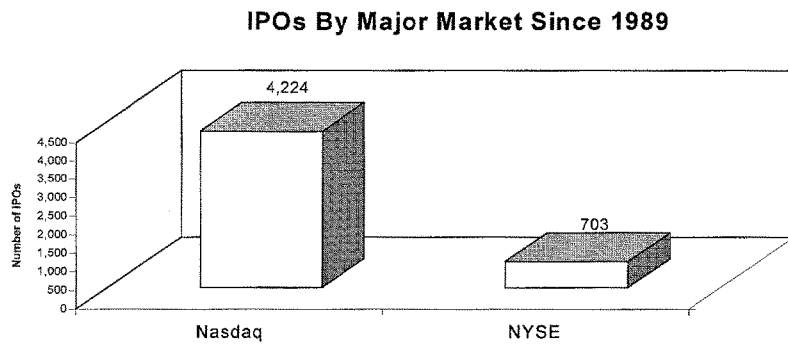
The Nasdaq Stock Market plays the dominant market role in initial public offerings in the US, and Nasdaq companies are major creators of jobs.

A 1995 study by Cognetics of Cambridge, Massachusetts dramatically bears out this point. It found that while Nasdaq companies comprised less than 1% of all public and private companies in the United States over the previous four years and had an employment base of 3 million people, they had created more than 500,000 jobs. This was more than 16% of all new US jobs created during that period. By way of contrast, over that same time, Fortune 500 companies were losing 200,000 jobs per year. Not only were the Nasdaq companies creating jobs, but based on a number of factors such as sales and employment growth, 51% of Nasdaq companies were growing at a growth index rate the study described as "explosive."



Nasdaq IPOs have grown from start-ups to household names in only a few years. These include MCI WorldCom, Amgen (1983), Sun Microsystems (1986), Microsoft (1987), Dell Computer (1988), Cisco Systems (1990), and Starbucks (1992). More recently are Yahoo (1996), Amazon.com (1997), eBay (1998), eToys (1999), and Red Hat (1999).

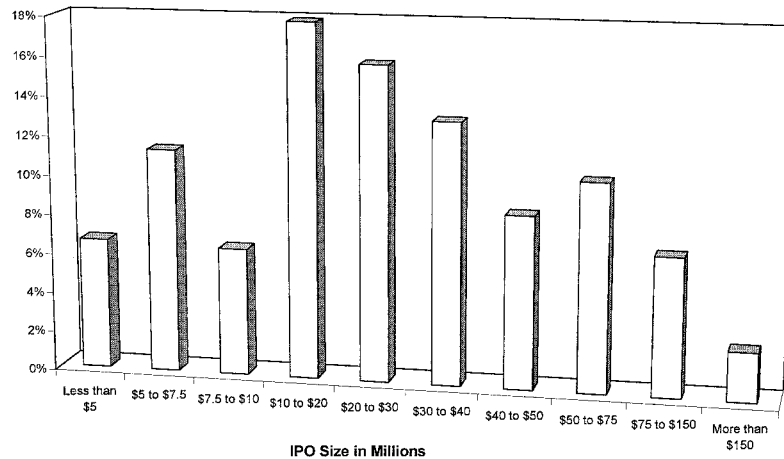
Nasdaq's dominant role as the IPO market is borne out by the experience of the two major stock markets in the US since 1989:



These 4,224 Nasdaq IPOs have raised \$154 billion in new capital to fuel the growth of these newly public companies.

Nasdaq IPOs finance small businesses as well as large. The following chart displays the variety of size in Nasdaq IPOs since 1989.

### Nasdaq IPOs by Size Since 1989



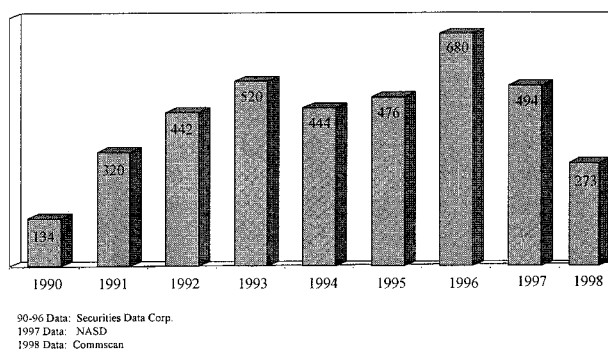
The average Nasdaq IPO in 1997 had a profile that includes:

- An offer price of \$10.80
- An offering valued at \$39.1 million
- 7.9 market makers
- Average daily share volume of 90.2 thousand
- \$124.6 million in total assets
- \$49.5 million in total revenues
- \$41.2 million in total equity and
- \$166.4 million in market capitalization subsequent to the offering.

While much of the public thinks that the trend in the number of IPOs per year has been only up in the last ten years, IPOs can vary significantly year to year, in response to the market and other factors, as shown in the following chart.

## Initial Public Offerings

Number of Nasdaq Offerings



Nasdaq issuers have become virtually synonymous with high technology, and Nasdaq's role in this sector is extremely strong, as shown in the following table.

## Nasdaq's Hi-Tech Market Share

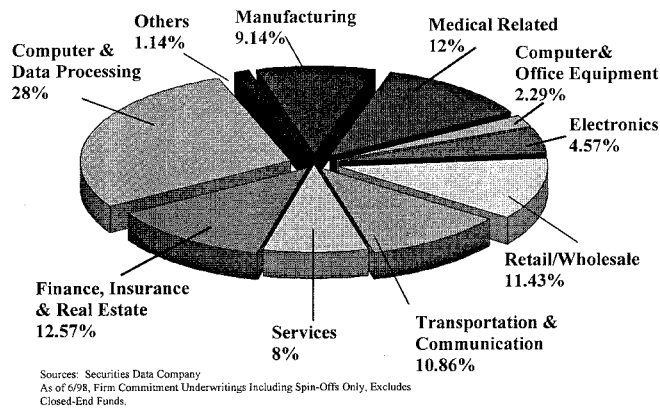
	Total Companies in U.S. Equity Market	Nasdaq Companies	Nasdaq Market Share
<b>Software</b>	<b>608</b>	<b>560</b>	<b>92.1%</b>
<b>Computer Manufacturers</b>	<b>250</b>	<b>211</b>	<b>84.4%</b>
<b>Communications Equipment</b>	<b>191</b>	<b>156</b>	<b>81.7%</b>
<b>Electronic Components</b>	<b>204</b>	<b>157</b>	<b>77.0%</b>
<b>Electrical Equipment</b>	<b>202</b>	<b>155</b>	<b>76.7%</b>
<b>Biotechnology</b>	<b>410</b>	<b>341</b>	<b>83.2%</b>

As of 5/98  
Source: The Nasdaq Stock Market and FactSet Research Systems, Inc.

However, while strong versus other markets in the high technology area, Nasdaq companies are also spread among a variety of industries, and thus can provide

financing to companies in many sectors other than high tech, as shown in the following chart.

### 1998 Nasdaq IPOs by Industry



### Going public

When management takes a company public, it seeks benefits, but it must also assume important new responsibilities. Both the advantages and disadvantages of going public stem from the company's becoming a public property. By sharing ownership, management increases the company's business opportunities, but gives up exclusive control of its future. Small businesses should bear in mind that even though an IPO can be an important potential avenue for growth of a company, it is not the only path, it is not always the best path, and it certainly is one that must be approached with careful consideration.

#### ***The Benefits and Responsibilities of Going Public***

The benefits to going public include expanded access to capital, increased employee commitment, enhanced product marketing, expanded business relationships, and easier mergers and acquisitions.

Expanded access to capital. The most important reason for an IPO is to bring financial resources to the growing company. A successful IPO can immediately bring considerable proceeds to a company – making the public market potentially

the single most substantial source of corporate funding. Subsequently, public companies can return to the market for additional capital through secondary equity offerings. Being public, a company can consider bond or convertible bond issues. Moreover, public companies enjoy a more favorable balance of equity to debt – which allows greater bank financing and better terms.

Increased employee commitment and recruiting power. By instituting a stock purchase plan for employees, public companies can, in effect, make employees owners of the company where they work. Such plans elicit a stronger employee commitment to productivity and quality, since they link the employees' financial future to the company's success.

Enhanced product marketing. National newspapers and magazines are much more likely to cover public companies than private companies and to focus on products from a positioning and market-share perspective. Exposure to a company's business and products is enhanced by national radio and television programs focusing on business and finance, daily stock market tables, required SEC filings such as a company's annual and quarterly reports, and securities analyst reports.

Expanded business relationships. The publicity that a public company generates by meeting its disclosure obligations also brings it to the attention of prospective suppliers and distributors, as well as potential partner companies for joint ventures. Such relationships, existing or future, are strengthened by the added confidence that comes from knowing that the company has met stringent SEC reporting requirements and stock market financial and corporate governance listing standards, which operate like a "Good Housekeeping Seal of Approval."

Facilitated mergers and acquisitions. Public companies are better able to finance cash acquisitions because they have the option of raising additional cash through a secondary offering. Alternatively, public companies can use their own stock and maintain a cash position.

### ***The Responsibilities of Going Public***

With these benefits, however, come important responsibilities that involve sharing corporate control and financial gain, startup and operating costs, maximizing shareholder value, sharing strategic information, and giving up control over personal assets in the company.

Sharing corporate control. By selling stock to shareholders, the original owners of a public company are relinquishing exclusive control of the company's future. Once public, most companies need shareholder approval to take certain corporate

actions, such as increasing the number of shares outstanding, creating a new class of stock, or instituting stock-option compensation plans, employee stock purchase plans, or mergers and acquisitions. Even in decisions where shareholder approval is not required by law, their interests, opinions, and reactions must be taken into account.

The company's degree of control—measured in terms of the number of shares held—may be even further reduced by secondary offerings or large shareholders who act individually or in concert to change the composition of the board or even replace management. Moreover, an unsolicited tender offer – meaning the offer to buy a large number of shares by an outside third party – could wrest the company away from its original owners entirely.

Sharing financial gain. Going public greatly increases the number of company “owners” – those entitled to share in the company's profits. Such distributions are inherent to public share ownership of the company. Public companies with uneven cash flow may be pressured to make one-time or irregular dividend payments when revenues permit, while others with established cash-flow levels might be expected to institute regular periodic dividend payments. For certain growth companies, on the other hand, stock price appreciation may be the mechanism for rewarding shareholders.

Start-up and ongoing costs. The initial and continuous costs involved in going public can be very high. In the beginning, substantial fees are required for various functions of the public offering, such as underwriting discounts and commissions, as well as costs for accountants and attorneys. There are also filing, registration, and transfer agent fees involved. The NASD estimates that going public with a \$25 million offering will incur costs of \$2.4 million; a \$50 million public offering would incur costs of about \$4.1 million.

Managing to maximize shareholder value. Because corporate control of a public company ultimately rests with the shareholders themselves, the objectives of any strategic decision must include enhancing shareholder value. Stock price will become a factor in management's deliberations. Since shareholder value is often measured in terms of the share price-to-earnings multiple, actions such as stock buy-backs may be adopted specifically to increase that ratio. Other actions, such as stock splits, may be instituted to respond to the preferences of the shareholder base.

Sharing strategic information. Public companies are required by law to disclose information – both to shareholders and financial regulators. Prompt, clear

disclosures help to build shareholder loyalty and the good will of the public by keeping these parties informed of the company's activities.

Relinquishing control over personal assets invested in the company. While stock in a public company may be more liquid than stock in a private company, control over liquidating that asset is limited. Corporate officers may not trade shares purchased in the secondary market in response to nonpublic material information. In addition, there are periods specified by law when shares may not be traded (i.e., at the time of earnings announcements) and periods when shares purchased in the public market may not be resold. The sale stock issued when the company was private is also restricted.

### **Venture Capital**

It is important for small businesses to know that there are a variety of other means to obtain financing for small businesses that do not immediately involve going public. In addition to bank financing, venture capital is an important source of equity for start-up companies. Venture capital is money provided by professionals who invest alongside management in young, rapidly growing companies that have the potential to develop into significant economic contributors. Examples of companies that received venture capital early in their development include Digital Equipment Corporation, Apple, Federal Express, Compaq, Sun Microsystems, Intel, Microsoft and Genentech.

Venture capitalists generally finance new and rapidly growing companies – usually in high technology – by purchasing equity securities in them. They assist the companies in the development of new products or services and actively participate in their management.

Venture capital firms are pools of capital, typically organized as a limited partnership, that invest in companies likely to provide a high rate of return within five to seven years. The venture capitalist may look at several hundred investment opportunities before investing in a few companies with favorable investment opportunities.

In the last few years, individuals have been a growing part of the early stage start-up venture life cycle. These "angel investors" will mentor a company and provide needed capital and expertise to help develop companies.

Another recent trend is corporate venturing or "direct investing" in portfolio companies by subsidiaries of non-financial corporations. These investment vehicles seek investment opportunities that fit with the parent

company's strategic technology or that provide synergy or cost savings. Large corporations have recognized that strategic venture financing is a way to exploit new technology while limiting their downside risk.

The venture firm aims to exit the investment in the portfolio company three to five years after the initial investment. Although mergers and acquisitions are the most common form of exit, the initial public offering is the most visible type of exit for a venture investment. Moreover, the option of taking a company public – whether it is exercised or not – is critical to assure the full valuation of the company at exit. At public offering, the venture firm relinquishes its management role in the company. It is considered an insider and will receive stock in the company, but the firm is restricted in how that stock can be sold or liquidated for several years.

Over the last twenty-five years, almost 3,000 companies financed by venture funds have gone public. In the year ended June 30, 1999 venture backed IPOs raised \$8.5 billion. Virtually all of venture financed companies that have gone public do so on the Nasdaq Stock Market. According to Venture One, 98% of venture backed deals that went public in the first six months of 1999 went onto the Nasdaq Stock Market. Venture backed companies in the Nasdaq 100 Composite include Apple, Amazon.com, Autodesk, Biogen, Cisco Systems, eBay, Genentech, Immunex, Intel, Intuit, Lycos, MCI WorldCom, Microsoft, Nextel, Paychex, PeopleSoft, Qualcomm, Staples, Starbucks, Sun Microsystems, and Yahoo, among others. Venture capitalists view Nasdaq as a critical part of their strategy that allows them to liquidate their holdings and reemploy their capital to new startups.

### **Stock Market Role in Going Public**

Small businesses need to bear in mind the role that a market plays in an IPO and their main goal of access to capital. The stock market should assist the issuer toward that goal by:

- Maintaining a liquid market for the resulting stock,
- Providing investors with fast execution of trades at a low cost,
- Assuring investor confidence through strict regulation, and
- Helping to create demand for the company's stock.

Not all stock markets are the same, nor is one stock market appropriate for all types of companies. Markets vary by listing requirements (to begin trading) and maintenance standards (to continue trading), as well as by their rules and



regulations governing trading, reporting, and settlement. Stock markets also vary according to market structure and trading mechanisms. The choice of market for a company going public in the U.S. is a strategic financial decision equally as important as selecting the right investment banker, law firm, or accounting firm.

There is, however, no consensus on selecting the right fit when choosing a marketplace. Factors for consideration include industry analysis, earnings and revenue growth rates, spread, liquidity, trading volume, public float or other issues as the company defines them.

#### ***Listing on the Nasdaq Stock Market***

Since its debut as the world's first electronic stock market in 1971, the Nasdaq Stock Market has used technology to bring millions of investors together with the world's leading companies. By providing an efficient environment for raising capital, Nasdaq has helped thousands of companies achieve growth and successfully make the leap into public ownership.

The Nasdaq Stock Market consists of two distinct, separate markets, which serve both large and small businesses. The Nasdaq National Market includes some the largest, best known companies in the world, such as Microsoft, Intel, Apple Computer, Cisco Systems, Oracle, Amgen and MCI WorldCom. National Market companies must meet stringent financial and corporate governance standards to be listed and to maintain their listing. The Nasdaq SmallCap Market is the smaller tier of the Nasdaq Stock Market and utilizes financial standards for listing that are not as stringent as for the National Market. The corporate governance standards, however, are the same. As SmallCap companies grow, they often move up to the National Market. The listing standards for both markets are contained in the publication *Going Public* that was provided with my testimony.

These strict entry and maintenance standards for public companies distinguish a company as a quality investment, ensure that the companies that list are worthy of investor trust, and that those investors are treated fairly by the companies' management. Small businesses need to be aware that because of the rigor of these standards, many of the companies that apply for Nasdaq listing will not be listed.

Nasdaq is regulated by employing the industry's most sophisticated surveillance systems and regulatory specialists to protect investors and provide a fair and competitive trading environment.

On Nasdaq, trading is conducted through a computer and telecommunications network, accessible from desktop computer terminals

worldwide. This market structure is now the most common throughout the world. Without size limitations or geographical boundaries, or a central trading floor, Nasdaq's market structure allows an unlimited number of market participants to trade in a company's stock. Together, these participants help ensure transparency and liquidity while maintaining a fair and orderly market. Nasdaq market participants include both Market Makers and Electronic Communication Networks (ECNs), and soon the OptiMark system.

Market Makers. Unlike an exchange, which uses a single specialist to make a market in a stock, Nasdaq utilizes multiple market makers. These market makers are independent dealers who openly compete with each other for investors' orders in each Nasdaq-listed stock, using their own capital to buy and sell Nasdaq securities. Each market maker has equal access to Nasdaq's trading system, which broadcasts their quotations simultaneously to all market participants. The result of their combined competitive position and capital helps to provide immediate and continuous trading and maintain an orderly market.

Market makers provide liquidity and create order flow by committing capital and maintaining inventories, affirmatively seeking the other side of a trade, and maintaining two sides of the market, continuously buying and selling.

In addition to committing capital, many of Nasdaq's market-making firms offer a full range of financial and investment services. These services include generating research reports on the stocks they trade, seeking buyers and sellers through retail networks and institutional sales representatives, and advising companies on initial and secondary public offerings and other investment transactions. Currently, more than 500 dealers from some of the world's largest securities firms as well as from regional, local, and boutique/specialty firms are registered market makers for Nasdaq-listed stocks.

Electronic Communications Networks (ECNs). ECNs, trading systems that bring in additional customer orders, are also participants in Nasdaq. To trade on Nasdaq, these private trading systems must be certified with the SEC and registered with Nasdaq and NASDR. As Nasdaq market participants, ECNs display either one-sided or two-sided quotes, which reflect actual orders, and provide institutions and market makers with an anonymous way to enter orders for stock into the marketplace. ECNs foster competition among market makers and further enhance the market's liquidity.

OptiMark. The OptiMark Trading System was recently approved by the SEC as an integrated facility of The Nasdaq Stock Market trading network. This advanced

electronic trading system offers traders and investors a “third dimension” to their trading criteria. With OptiMark, investors can indicate their interest in trading across a range of price and size parameters based on their trading strategies. As frequently as every five minutes the OptiMark system matches large orders anonymously – a feature especially beneficial to institutional investors looking to trade large orders with reduced market exposure.

## **Conclusion**

In conclusion, we thank the Small Business Committee for this opportunity to relay to small businesses the importance of market choice in going public and what factors they should consider in that choice. We also invite those small businesses seeking their IPO dream to join the more than 80% of all IPOs in the US to come to the Nasdaq Stock Market when they are ready to make that dream a reality.

## Nasdaq Quantitative Listing Requirements

Nasdaq National Market Listing Requirements					
Requirements	Initial Listing 1	Initial Listing 2	Initial Listing 3	Continued Listing 1	Continued Listing 2
Net Tangible Assets <sup>1</sup>	\$6 million	\$18 million	N/A	\$4 million	N/A
Market Capitalization <sup>2</sup>	N/A	N/A	\$75 million or \$75 million and \$75 million	N/A	\$50 million or \$50 million and \$50 million
Total Assets					
Total Revenue					
Pretax Income (in latest fiscal year or 2 of last 3 fiscal years)	\$1 million	N/A	N/A	N/A	N/A
Public Float (shares) <sup>3</sup>	1.1 million	1.1 million	1.1 million	750,000	1.1 million
Operating History	N/A	2 years	N/A	N/A	N/A
Market Value of Public Float	\$8 million	\$18 million	\$20 million	\$5 million	\$15 million
Minimum Bid Price	\$5	\$5	\$5	\$1	\$5
Shareholders <sup>4</sup> (round lot holders)	400	400	400	400	400
Market Makers	3	3	4	2	4
Corporate Governance	Yes	Yes	Yes	Yes	Yes

<sup>1</sup> Net tangible assets means total assets (excluding goodwill) minus total liabilities.

<sup>2</sup> For initial listing 3 or continued listing under option 2, a company must satisfy one of the following to be in compliance: the market capitalization requirement or the total assets and the total revenue requirement.

<sup>3</sup> Public float is defined as shares that are not held directly or indirectly by any officer or director of the issuer or by any other person who is the beneficial owner of more than 10 percent of the total shares outstanding.

<sup>4</sup> Round lot holders are considered holders of 100 shares or more.

The Nasdaq SmallCap Market Listing Requirements		
Requirements	Initial Listing	Continued Listing
Net Tangible Assets <sup>1</sup>	\$4 million or \$50 million	\$2 million or \$35 million
Market Capitalization		
Net Income (in latest fiscal year or 2 of last 3 fiscal years)	\$750,000	\$500,000
Public Float (shares) <sup>2</sup>	1 million	500,000
Market Value of Public Float	\$5 million	\$1 million
Minimum Bid Price	\$4	\$1
Market Makers	3	2
Shareholders (round lot holders) <sup>3</sup>	300	300
Operating History <sup>4</sup>	1 year or \$50 million	
Market Capitalization		N/A
Corporate Governance	Yes	Yes

<sup>1</sup> For initial or continued listing, a company must satisfy one of the following to be in compliance: the net tangible assets requirement (net tangible assets means total assets, excluding goodwill, minus total liabilities), the market capitalization requirement, or the net income requirement.

<sup>2</sup> Public float is defined as shares that are not held directly or indirectly by any officer or director of the issuer or by any other person who is the beneficial owner of more than 10 percent of the total shares outstanding.

<sup>3</sup> Round lot holders are considered holders of 100 shares or more.

<sup>4</sup> If operating history is less than 1 year, initial listing requires market capitalization of at least \$50 million.

## Going Public

The Nasdaq Stock Market

## Preface

*Taking your company public through an initial public offering (IPO) is a major undertaking for any entrepreneur. The event is at once a source of pride, an opportunity for business growth, and a serious legal responsibility. You are wise to consult many different professionals for authoritative counsel. These advisers are usually members of the investment banking, legal, and accounting professions—as they should be. **Going Public** supplements their valuable perspectives with that of a stock market and securities industry self-regulatory organization. The Nasdaq Stock Market<sup>SM</sup> hopes that you find this publication helpful and wishes you great success.*

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## Going Public: Benefits and Responsibilities

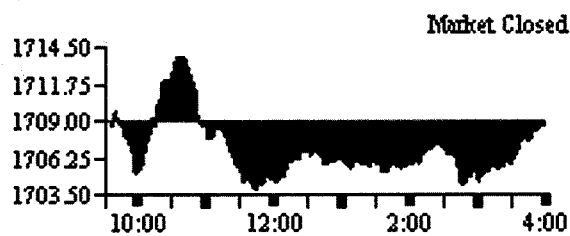
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### Market Activity

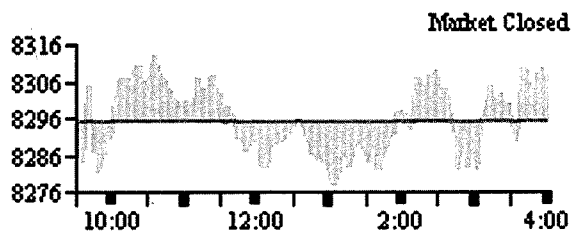
Feb. 11, 1998 Market Closed

**Nasdaq Volume** 760,094,000

**Nasdaq Composite** 1,708.55 0.49▲



**DJIA** 8,314.55 18.94▲



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### Nasdaq Ear

▲ 41 Exce

16 Met E

29 Failed

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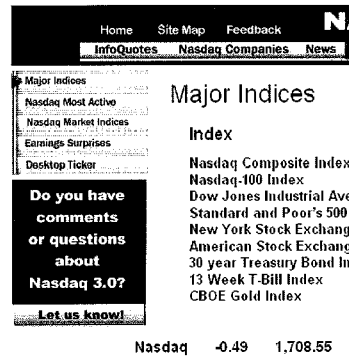
What's new



Chapter

## 1

*When you take your company public, you gain certain benefits by assuming additional responsibilities. Both the advantages and disadvantages result from the fact that your company will become a public property. By sharing ownership, you spread the company's reputation and increase its business opportunities. At the same time, you give up your exclusive control of its future.*



### Benefits

**Expands access to capital.** The public market is potentially the most substantial source of corporate funding. An initial public offering (IPO) can immediately bring considerable proceeds to a company. Subsequently, the public company can return to the market for additional capital through secondary equity offerings. The public company is also in a position to consider bond or convertible bond issues. Finally, a more favorable balance of equity to debt should allow greater bank financing and better terms.

**Increases employee commitment and recruiting power.** A public company can institute a stock purchase plan for employees, which, in effect, makes employees owners of the company where they work. It also may offer them an attractive investment on favorable terms. Such plans tend to elicit a stronger

employee commitment to productivity and quality, since they link employees' financial future to the company's success. At the same time, these plans express the company's good will through its offer to share ownership. Similarly, stock-option bonus arrangements are attractive compensation to financially savvy executives that link a portion of their compensation to the company's future; in essence, to their own managerial performance. Moreover, such plans tend to put a company's stock in predominantly friendly hands and sometimes can, should an undesirable takeover threat arise, be developed into a defense strategy.

**Complements product marketing.** Most companies' customers are, at the same time, investors themselves, exposed to the standard information flow of a public company. Articles about the company in local and regional newspapers and magazines—resulting from the company's news releases, media relations initiatives, and business journalist inquiries—will inevitably report on the company's products and services. National newspapers and magazines are much more likely to cover public companies than private companies and focus on products from a positioning and market-share perspective. Local radio and television business programs may contribute to this exposure. Even the daily stock market tables contribute to public awareness of the company. Likewise, the company's annual report, quarterly reports, and corporate identity brochures publicize the company's products as they define the company, outline strategy, and report on performance. Securities analyst reports serve the same function, but from an objective, analytical point of view. Such publicity can be an effective, if indirect, reinforcement of the company's advertising and product-promotion initiatives.

**Expands business relationships.** The publicity that a public company generates by meeting its disclosure obligations can also bring it to the attention of prospective suppliers and distributors as well as potential partner companies for joint ventures, and sometimes the research laboratory or inventor with a marketable idea. Such relationships, existing or future, are strengthened by the added confidence that comes from knowing that the company has met stringent Securities and Exchange Commission (SEC) reporting requirements and stock market financial and corporate governance listing standards. The assurance that a company's financial condition is subject to continuing scrutiny by the market may even affect various business negotiations favorably.

**Facilitates mergers and acquisitions activity.** A public company is better able to finance cash acquisitions because it has the option of raising additional cash through an offering. Alternatively, a public company can use its own stock and maintain its cash position. For acquisitions financed by an exchange of stock, a public company can offer a valuation determined by the market, avoiding the complications of calculating the value of a private company. Finally, in a merger, a public company offers the certainty of public disclosure and broad-based shareholder scrutiny when considering financial condition and operations.

**Provides flexibility in personal financial planning.** Shares of a public company are much more liquid than those of a private enterprise and can aid in personal financial management, including portfolio diversification and asset allocation, as well as the eventual disposition of an estate. Given their public market valuation, calculating the proceeds from the sale of public shares can be done with some certainty. Moreover, the ability to time their conversion to cash, while observing insider selling restrictions and market trends, is greatly increased.

## Responsibilities

**Sharing corporate control.** While the owner of a private company with venture capital financing is never entirely free to make strategic decisions unilaterally, owners of a public company share even more of the decision making. Stock markets require independent members of a public company's board of directors to provide an objective review of management's policies. Public companies may need shareholder approval to take certain corporate actions, including increasing the number of shares outstanding, creating a new class of stock, stock-option compensation plans, employee stock purchase plans, and mergers and acquisitions. Even in decisions where shareholder approval is not required by law, their interests, opinions, and reactions must be taken into account. Of course, your goal and theirs will largely be the same—enhancing corporate profitability—though you may inevitably disagree on the policies and methods to use and the timetable to follow. Also, your degree of control—measured in terms of the number of shares that you hold—may be reduced by secondary offerings or large shareholders acting individually or in concert to change the composition of the board or even replace management. Depending upon the economic environment and company performance, an unsolicited tender offer could wrest the company away from you entirely.

**Sharing financial gain.** When considering an initial public offering, owners of private companies should be aware that going public greatly increases the number of company “owners” — those entitled to share in the company's profits. Such distributions are inherent to public share ownership of the company. Public companies with uneven cash flow may be pressured to make one-time or irregular dividend payments when revenues permit, while others with established cash-flow levels may be expected to institute regular periodic dividend payments. For certain growth companies, on the other hand, stock price appreciation may be the mechanism for rewarding shareholders. Because it can drive up stock prices, a strong company performance offers investors a chance to share financial gain, allowing them to sell shares for a profit in the market.

**Managing for shareholder value.** Senior management of a public company and its board of directors are ultimately accountable to the shareholders and, therefore, must diligently perform their fiduciary responsibilities. Furthermore, because corporate control of a public company ultimately rests with the shareholders themselves, the objectives of any strategic decision must include enhancing shareholder value. Stock price itself will become a factor in management's deliberations. Since shareholder value is often measured in terms of the share price-to-earnings multiple, certain actions, such as stock buy backs, may even be adopted specifically to increase that ratio. Other actions such as stock splits, will be instituted simply to respond to the preferences of a large portion of the shareholder base. All of these measures, as well as strategic decisions directly affecting operations, need to be communicated to the market within the context of an ongoing investor relations (IR) program. Such a program positions the company with its shareholders and alerts them to the full value of their ownership position—value that they might not otherwise perceive.

**Sharing strategic information.** Periodic financial reporting, required by law, is an added business expense for a public company. This financial information and the required disclosure of material developments to shareholders may at times result in sharing what you, as the owner of a private company, would have previously considered confidential, proprietary strategic information. On the other hand, there is a wealth of competitive information on operations that is not required to be disclosed. While companies must tell more than they may have thought advisable before going public, ultimately, their competitive outlook should not be adversely affected by these disclosures. Prompt, clear disclosures will, in fact, help to build shareholder loyalty and the good will of the general public.

**Start-up and ongoing costs.** The initial and continuous costs involved in going public can be very high. In the beginning, substantial fees are required for various functions of the going public venture, such as underwriting discounts and commissions, as well as costs for accountants and attorneys. There are also filing, registration, and transfer agent fees involved. After your company goes public, you must consider the ongoing expenses of producing information for shareholders and regulatory entities, as well as continuing fees to lawyers and accountants as your company grows. Sample costs of going public are provided in the table below.

The following table provides examples of the costs associated with a \$25 million and \$50 million dollar offering. These figures are to serve as estimates so a company can plan accordingly.

<b>Estimated Cost of Going Public</b>		
<b>Offering Value:</b>	<b>\$25 million</b>	<b>\$50 million</b>
Total Shares Outstanding:	5,880,000 shares	5,880,000 shares
<b>Item</b>	<b>Estimated Fee</b>	<b>Estimated Fee</b>
Underwriting Discounts & Commissions	\$1,750,000 <sup>1</sup>	\$3,500,000 <sup>1</sup>
<b>Item 13 from Registration Statement</b>		
SEC Fees	9,914 <sup>2</sup>	19,828 <sup>2</sup>
NASD Fees	3,375 <sup>3</sup>	6,250 <sup>3</sup>
Printing and Engraving	100,000 <sup>1</sup>	100,000 <sup>1</sup>
Accounting Fees & Expenses	160,000 <sup>1</sup>	160,000 <sup>1</sup>
Legal Fees & Expenses	200,000 <sup>1</sup>	200,000 <sup>1</sup>
Blue-Sky Fees	15,000 <sup>1</sup>	15,000 <sup>1</sup>
Miscellaneous	34,200 <sup>1</sup>	34,200 <sup>1</sup>
Nasdaq Listing Fees	63,725 <sup>4</sup>	63,725 <sup>4</sup>
Transfer Agent & Registrar Fees	5,000 <sup>1</sup>	5,000 <sup>1</sup>
<b>Total</b>	<b>\$2,341,214</b>	<b>\$4,104,003</b>

<sup>1</sup> Mean values; issuers should be aware that all aspects of the relationship, including underwriting, can be negotiated.

<sup>2</sup> 1/29 of 1 percent of the offering value, inclusive of over-allotment shares.

<sup>3</sup> \$500 + .01 percent of the offering value, inclusive of over-allotment shares, not to exceed \$50,500.

<sup>4</sup> Includes a \$5,000 one-time company initial fee and a fee based on 5,880,000 total shares outstanding. Appendix A details the fee schedule by which Nasdaq will calculate a company's entry fee.

**Relinquishing control over personal assets invested in the company.** Although your investment in a public company will be more liquid than if the company were still private, your control over liquidating that asset will nevertheless be limited. You may not trade shares purchased in the secondary market in response to nonpublic material information. In addition, there are periods specified by law when shares may not be traded at the time of earnings announcements, and periods when shares purchased in the public market may not be resold. Moreover, you must be careful to avoid even the appearance of trading on nonpublic material information, because such activity by insiders is used to support fraud claims in securities class-action lawsuits. Also, selling by high-ranking insiders can adversely affect market confidence in your company while buying sends a positive signal. Both should be coordinated with the flow of company events and an ongoing investor relations strategy. Establishing trading windows for corporate officers and monitoring such trading can help to ensure compliance and reinforce strategic goals, giving peace of mind even in the face of less freedom. Finally, stock issued when the company was private is still “restricted” under SEC Rule 144 even after the IPO. Such privately placed stock (and any other stock acquired by corporate officers in the public market) is subject to the Rule’s sale restrictions unless it is included in a subsequent public offering.

# The Company Role and Selecting the Team:

Company Officers, Investment Bankers,  
Attorneys, Accountants

12.8

Nas

ary &amp; Graph

Technology Sector Technology Sector

Quickview

  
 Perspective

  
 Trading

  
 Analyst

  
 Performance

  
 Ownership

Setup

Help

Sources

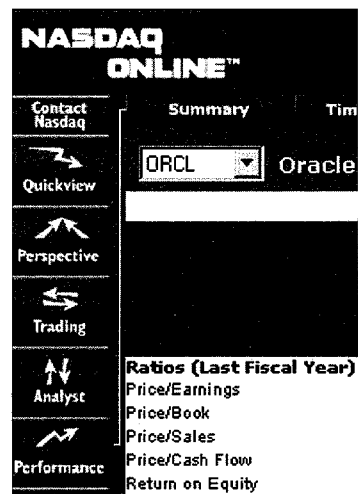
Feedback

Symbol	Last Sale	Net Chg	% Chg
<u>AMGN</u>	60.500	1.125	1.89%
Buy	Amgen Inc. Common		
<u>COMS</u>	40.125	0.438	1.08%
Buy	3Com Corporation Common		
<u>HWP</u>	55.875	0.875	1.54%
Buy	HEWLETT PACKARD CO Common		
<u>INTC</u>	150.125	3.750	2.44%
Buy	Intel Corporation Common		
<u>MSFT</u>	95.500	2.000	2.05%
Buy	Microsoft Corporation Common		
<u>ORCL</u>	41.000	0.250	0.61%
Buy	Oracle Corporation Common		
<u>NOVL</u>	12.875	0.125	0.98%
Hold	Novell Inc - Common Stock		

## Chapter

## 2

*Your company may already have one or more of the appropriate members of the underwriting team—investment bank, law firm, accounting firm—serving you on a regular basis. More likely, however, you will need either to review your existing relationships or establish new ones that will serve you well throughout the IPO process. Because you will probably continue your relationships with these professionals for some time after the underwriting, personal rapport will, of course, be important. With your team, you should feel comfortable confiding sensitive information, secure that appropriate discretion will be observed, and confident in the honesty and accuracy of all advice.*



**The company role.** Before selecting the team to take a company public, top company executives must be ready to take on the responsibility and time involved in going public, and more importantly being public. The company's CEO and other close advisers will need to play a key role in the formation of the team, and will have to make complex decisions throughout the process of going public based on a review of information generated by the team.

The company's executives also must have a business plan prepared well in advance of making the decision to go public. The business plan should outline the company's strengths and weaknesses. It will also serve to "sell" the company to various entities by demonstrating the viability of the company and its plans to go public.

**Act like a public company.** In anticipation of going public, it is imperative to begin to think and act like a public company—develop a publicly held attitude and mindset—as soon as possible. This includes addressing housekeeping issues such as cleaning up financials, establishing or reviewing internal controls, and reviewing company bylaws and stock option plans.

Prior to going public, a company should consider establishing and reviewing policies for corporate communications, developing investor and public relations programs, and setting aside resources to communicate with new constituents. It is necessary to develop standards for timely annual and quarterly filings with the SEC and to prepare for after-market support for new vendors and current team members.

This prepares a company for going public and, better yet, being public. It also saves on accounting fees and helps cut down on the time it takes to go public.

**Time factor.** Going public takes a great deal of time. Assigning someone to take the company public may prove beneficial so that the company is not derailed from its current business objectives. Once public, the CEO or designated IR manager will need to dedicate a significant amount of time to managing and communicating to a variety of new constituents: research analysts, portfolio managers, and individual investors. It is best to prepare for this role in the earliest stages of going public.

## Choosing an Investment Banker

**Interest.** At the outset, you need to make sure that your company selects an investment banker who will provide your particular IPO with the attention that it deserves and, afterwards, demonstrate a long-term interest in your company. Appendix C, Sources of Information on Investment Banking Firms, lists where you can find information to help you select an investment banking firm. Desirable ongoing post-IPO service includes proposals on financing alternatives, balance sheet structures, as well as advice on strategic decisions, in addition to trading support and continual research coverage. (See "NASD Regulation, Inc. Review for Fair Underwriting Compensation, Terms, and Arrangements" in Chapter 3.)

Prospective public companies and their IPOs differ, first, according to size of offering and, second, age of company and extent of its operations. There are global, full-service firms; smaller, full-service national firms with international capabilities; regional firms with in-depth geographic knowledge and varying product offerings; and boutiques, concentrated throughout the country, with an industry-sector or product specialty. Select an investment bank that matches your company's particular stage in its life cycle. Although it may not be a global firm, if you are well served now by a high-quality, if less visible, firm, you may eventually grow to attract the attention of others. Increasingly, companies are choosing a regional firm and a national or global firm to manage and co-manage, respectively, their IPO.



**Transaction experience.** The investment banker you choose should have experience putting together IPOs, and preferably have underwritten equity offerings of the size you are contemplating. Stock offerings of various sizes by companies of varying size and age pose their own unique challenges. The investment banker should be sufficiently knowledgeable and creative to propose effective structural solutions for your company's individual financial and strategic requirements. Finally, your underwriter should have experience in other kinds of financings and restructurings and be able to suggest useful capital formation measures in the future when equity offerings are not desirable.

**Industry knowledge.** Your investment banker will be able to serve you better if the banker has a working knowledge of your company's industry sector—its markets, business cycles, products, and competitors; common balance sheet structures and financial approaches to operations; investor expectations, characteristic financing techniques beyond IPOs, and, eventually, potential acquisition targets and joint venture partners.

**Distribution capability.** The ability to sell your company's stock and to target the desired type of investor to buy it can affect the initial success of the offering, its subsequent market performance, and even long-range corporate control. Your investment banker should be able to place your stock with a desired mix of individual investors and institutions, target a particular region of the country if necessary, and perhaps bring in some international ownership. The underwriter should also be able to arrange the appropriate syndicate to supplement its own placement strengths.

**Market making.** An appropriate volume of stock trading is essential to the long-term financial viability of a public company. If you go public on The Nasdaq Stock Market, your underwriter should commit to becoming a Market Maker in your company's stock and trade actively in it, as should other members of the selling syndicate. You may wish to visit the Market Maker's trading room to observe its level of activity and meet the prospective traders of your stock. Subsequent to the IPO, statistics on trading volume, quotations, and spreads will be available for your review.

**Research.** Your company's visibility among investors is a key ingredient of market performance. Periodic research reports keep your company before the eyes of institutional investors and brokers, who, in turn, will bring it to the attention of their retail clients. It is preferable if your underwriter has a strong, active research department and has indicated a long-term commitment to your company by assigning an analyst to follow it. Again, you may want to meet the analyst who will be assigned to your company before the IPO to become familiar with his or her background, analytical style, and predilections in communicating with companies. You should be careful, however, not to discuss the impending offering or any nonpublic information about your company. If you reveal information to analysts that the company has not yet announced publicly, you have made them, in effect, insiders, and they must then refrain from issuing reports until the company reveals the information to the public.

## Choosing a Law Firm

**Experience with underwritings.** The attorney that your company selects to handle your initial public offering should be familiar with the underwriting process, including the rules, regulations, and protocols that govern it. Your attorney should also be accustomed to dealing with the SEC, NASD Regulation, Inc. and the state securities commissions regarding prospectus approval, both in writing and over the telephone. For example, your attorney needs to know how to coordinate correspondence with staff of regulatory agencies, how to handle SEC filings, and must be familiar with the registration process, including the review of the prospectus and the registration statement. Such familiarity not only ensures that proper procedures are observed, but also helps to avoid inordinate delays because points of objection can be anticipated and remedied before filing.

**Industry knowledge.** Because corporate counsel will draft the prospectus, industry knowledge can be crucial to the description of the company's business and management's discussion and analysis, but particularly in identifying industry risks and judging if disclosure is adequate.

**Full-service capability.** A full-service law firm can provide helpful, convenient, and probably cost-effective advice to your principal attorney in matters of due diligence. Should issues about real property, intellectual property, patents, 401(k) plans, labor, or environment, for example, be raised, there likely will be a specialist on staff to provide an opinion.

## Choosing an Accounting Firm

**Stature in profession.** Usually, any company about to tap the public market should retain a national accounting firm or a firm that is a member of the American Institute of Certified Public Accountants (AICPA).

Their stature will give your audited financial statements more credibility with investors, and their "comfort letter"—assuring that there is no indication that the unaudited financial data appearing in the prospectus do not consistently follow generally accepted accounting principles—will more readily give other members of the team confidence in the document.

**Industry experience.** Your accountant should be familiar with Financial Accounting Standards Board (FASB) guidelines in general and any pertaining to your industry in particular. Your accountant should also be knowledgeable about how revenue is customarily recognized in your industry as well as acceptable reporting alternatives. Sales, for instance, are reported differently from one industry to another, and flexibility will be particularly advantageous in cases where the distinction between product and service is not clear. Also, your accountant should be able to guide you through the calendar of necessary SEC filing requirements.

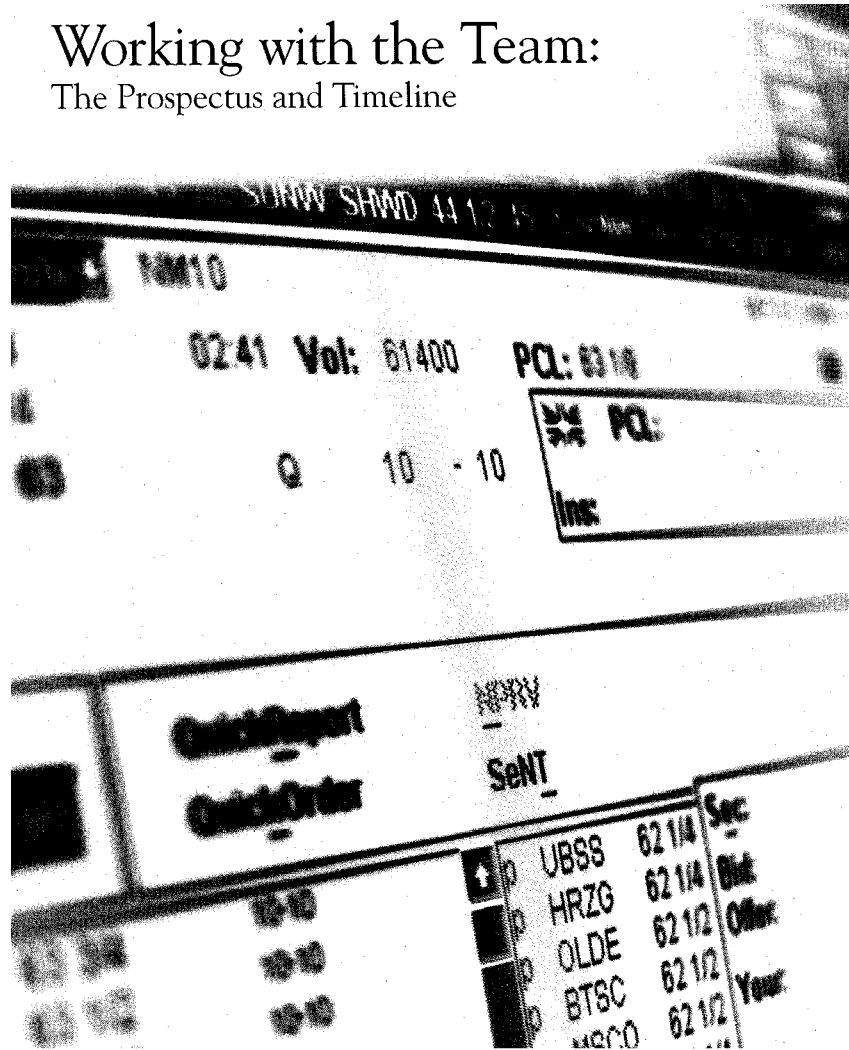
**Familiarity with emerging growth companies.** Because emerging growth companies tend to employ such incentive compensation arrangements as stock options, your accountant should be familiar with the varying consequences of reporting them according to the different models in use and be able to make a judicious selection based on experience. Also, accountants accustomed to working with companies in the early stages of their development can be particularly helpful in designing and implementing effective financial systems and controls. Accountants can assist with preparing strong financial disclosure statements, and can advise you on corporate and personal tax implications when going public.

### **Some Previous Teams**

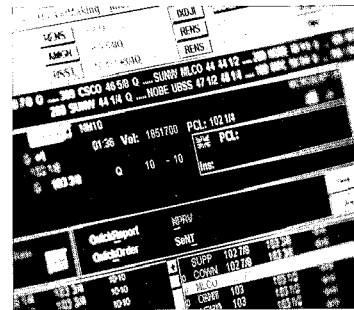
Appendix F lists IPOs brought to the Nasdaq National Market during 1997. Included is the company and its industry; the total number of shares; the dollar value of the offering; the initial price per share; and the underwriter, attorney, and accountant. This list is intended simply to give you some idea of who handled what kinds of offerings on Nasdaq® during this time period. It is in no way exhaustive of firms active in this business: other firms not appearing may have been involved in bringing companies public on Nasdaq in previous years. Also, they may have brought companies public on other stock markets during these years. If you are considering a firm not appearing on these lists and wish to learn about its experience in this area, request from the firm a list of its previous IPO transactions. Also you can contact a Nasdaq representative for a more tailored list of recent IPOs in your industry.

## Working with the Team:

The Prospectus and Timeline



At the center of the IPO process is the prospectus. The prospectus is the first part of the registration statement required by the Securities Act of 1933 for a company to issue new securities for public distribution. SEC regulations govern the contents of the prospectus as well as the supplemental financial information that comprises the second part of the registration statement. The SEC reviews the prospectus, as does NASD Regulation<sup>SM</sup> in its capacity as the sole self-regulatory securities industry association registered with the SEC (under the 1938 Maloney Act amendments to the Securities and Exchange Act of 1934). State securities commissions will also review a prospectus for an offering to be sold within their respective jurisdictions.



### Developing the Prospectus

The prospectus is both a disclosure document by law and a selling document by custom, since it is the only information that the law allows to be disseminated about the offering. Because the company, its corporate officers, and board of directors are absolutely liable for any misstatement or omission of material information—even if there was no intent to deceive—the narrative and accounting parts of the prospectus must be clear and complete. Usually corporate counsel is primarily responsible for drafting the narrative part of the prospectus, while the accounting firm will prepare the financial statements and the investment banker will supply the underwriting details.

Above all, it is important to be completely and fully truthful in responding to all information requested by these professionals. Your company's attorney will judge how to express positive information without exaggeration and negative information, while at the same time positioning the company as favorably as possible. The attorney cannot accomplish these objectives however, without first finding out what exactly must be described. All professionals involved will, in their turn, exercise "due diligence"—appropriate care and effort—in ascertaining the accuracy and adequacy of all statements contained in the prospectus.

The prospectus is required to contain a detailed description of the business, a description of management structure, management compensation figures, and a description of any transactions between the corporation and management, as well as the names of principal shareholders and their amounts of ownership. The prospectus must also include audited financial statements and a management discussion and analysis of operations and financial condition, together with information on the use of proceeds, effect of dilution on existing shares, dividend policy, and capitalization. The prospectus also describes the underwriting agreement—including whether the underwriting will proceed on a firm commitment or best efforts basis, as well as all forms of compensation—and the selling syndicate.

In particular, a statement of all risk factors is essential, as is the careful and prudent characterization of the company's operating condition and competitive position. Factual statements about the company and its historical performance should predominate; any statements about prospects should be carefully qualified. Within these constraints, the prospectus still functions as a sales brochure because all prospectuses observe the same kind of precision and cautionary tone.

### **SEC Review for Adequate Disclosure**

The SEC's role in the regulation of IPOs, as with corporations generally, is primarily in the area of disclosure. Within the SEC, the Division of Corporation Finance will review the registration statement when it is filed for the accuracy and adequacy of all "material facts"—information that would affect investment decisions. IPOs tend to be scrutinized more closely than secondary offerings because they have not been subject before to such careful analysis.

The SEC will respond formally to the registration statement with a comment letter specifying any deficiencies that need to be addressed. The company, in turn, may file a letter with the SEC responding to requests for information and describing proposed amendments to the prospectus. If the SEC is satisfied with the submission, it will indicate that it will declare the registration statement effective upon request. Because the prospectus must be circulated to potential investors at least two days before the investment decision, the SEC may at times determine that the preliminary prospectus contains a serious misstatement or omission that requires the company to recirculate an amended version of the preliminary prospectus. Where an offering structure is particularly complex, the company can request a pre-filing conference with SEC staff to assist in resolving significant issues.

While there is no way to predict what portions of the prospectus will receive the closest SEC scrutiny, the SEC does place great emphasis on the discussion of the company's operations and financial results (Management's Discussion and Analysis, the MD&A)—explaining the company's financial performance, liquidity, and resources. Since certain alternative accepted accounting procedures may exist for reporting particular revenue, the SEC may either object to or require further explanation as to why a particular method was employed. Certainly adequate disclosure of risk is a perpetual concern of the SEC as is sufficient support for positive statements about the company's competitive position. Management compensation is also closely scrutinized.

### **NASD Regulation, Inc. Review for Fair Underwriting Compensation, Terms, and Arrangements**

While the SEC's review focuses on disclosure, NASD Regulation's review focuses on the fairness of underwriting compensation, terms, and arrangements, and is conducted by its Corporate Financing Department according to the NASD Regulation's Corporate Financing Rule. NASD Regulation's review protects the issuer by monitoring the relationship between the company and the underwriter to ensure that the amount of compensation paid to underwriters and the terms and arrangements relating to the proposed distribution are fair and reasonable. The review is intended to assure that a regulatory fairness is applied to all transactions. However, it is not a substitute for an issuer's own negotiating efforts. Issuers should therefore be aware that all aspects of the relationship, including underwriting, can be negotiated. NASD Regulation's underwriting compensation guidelines prevent excessive compensation to the underwriters and ensure that the company receives a fair share of the purchase price paid by investors. Excessive underwriting compensation reduces the net proceeds of the offering that the company can use to carry out its business plan successfully.

To ensure that investment bankers are fairly compensated for the risks that they assume in an underwriting, while at the same time making sure that the company is not overcharged for these services, the Rule distinguishes between various kinds of risk according to types of underwritings. A "firm commitment" underwriting entails greater risk than a "best efforts" underwriting because the investment banker commits its capital by buying the securities outright and becomes the owner of all securities that are not resold to the public. In a best efforts underwriting, on the other hand, the investment banker agrees to make a good faith effort to sell the securities on behalf of the issuer but does not risk any capital by purchasing them beforehand. Likewise, an investment banker assumes greater risk and greater expense in an IPO than in a secondary offering because the investing public is not familiar with the company, and therefore not readily disposed to purchase on the basis of established stock performance, disclosure, research, and publicity. With an IPO, the firm must educate the market to a degree far beyond that required for a secondary offering.

While taking into account these risks, NASD Regulation evaluates all forms of compensation according to formulas specified in the Rule, including both cash and noncash items such as stock, stock options, warrants, and contractual post-offering investment banking services. A determination of fairness is then made on the total of cash and noncash items and on whether any arrangements are present that are presumed to be unfair and unreasonable under the Rule. If NASD Regulation finds that the proposed compensation and arrangements are unfair or unreasonable, the company and its underwriter will need to renegotiate compensation, revise the unfair arrangement, and amend the prospectus. The SEC will not declare an underwriting effective until NASD Regulation has concluded its review and issued a comment letter expressing an opinion of “no objections” to the proposed compensation and arrangements.

The actual NASD Regulation guidelines stipulating the maximum amount of compensation allowable in various sizes and types of offerings remain confidential in order to preserve a competitive environment among underwriters. Companies should interview several underwriters and negotiate the most favorable compensation arrangements, taking into account all cash, securities, rights, contractual services, and consulting agreements that may be part of the compensation package. Companies and underwriters may request prefilling advice from NASD Regulation regarding the fairness of prospective compensation packages.

Companies should keep in mind that NASD Regulation’s compensation guidelines apply to both underwriters and “related persons” such as a “finder”—someone whose service to the company is to locate an underwriter and sometimes other members of the underwriting team—and a “financial consultant”—someone who advises on the financial statements, size and price of the offering, and other financial matters. Any compensation paid to a finder or to a financial consultant is counted under NASD Regulation rules as part of the total compensation package for the offering. Companies should exercise caution, therefore, in hiring finders and financial consultants since compensation paid to such persons will reduce the amount of compensation remaining under the guidelines.

After accounting for finders’ or consultants’ fees, a company may have difficulty attracting an investment bank to undertake the IPO, since there may be insufficient allowable funds remaining to pay the desired underwriter’s customary compensation amount. In certain cases, the company may have to settle for an underwriter who is unable to provide all of the services that a successful underwriting requires. Sometimes the company may not even be able to engage an underwriter for the amount of compensation remaining.

### **State Securities Commissions’ Review of Merits of the Offering**

Neither the SEC nor NASD Regulation reviews an initial public offering for its soundness as an investment. The SEC ensures that all the facts that would influence an investment decision are clearly and accurately disclosed and NASD Regulation ensures that underwriting compensation is fair to both the company and the investment banker.



A number of state securities commissions, on the other hand, do review the merits of a security. Typically, their "merit review" standards are indefinite, expressed in terms of offerings that are "fair, just, and equitable." Thus, state administrators can exercise broad discretion over offerings that can be sold in their states.

Federal law now precludes states from imposing their registration requirements on securities that will be traded on the Nasdaq National Market or the New York or American Stock Exchanges. For IPOs to trade on other markets, the company, through its counsel, must file with each state in which the securities will be sold. The offerings will be reviewed according to state laws that have come to be referred to as "blue-sky" laws, after the suspect investments that they are designed to prevent. Over two-thirds of these state securities laws stipulate merit as a qualification. Their reviews may focus on prospective shareholder value and control, such as share dilution and voting rights; the legitimacy and viability of the company, such as revenue stream, sales, potential products or services; or, insider privileges, such as options, loans, or other financial arrangements, or seats on the board.

If necessary, you and your IPO team will have to make adequate preparation to secure approval in those states where your securities will be sold at approximately the same time as you expect SEC and NASD Regulation approval so that the offering is not delayed and market-timing opportunities curtailed. State filing fees are usually based on the aggregate dollar value of shares sold in the state, and sales reports may have to be filed after the offering to verify previous figures submitted.

## The IPO Process

The entire initial public offering process is at once fast-moving and highly structured, governed by an interlocking set of federal and state laws and regulations and self-regulatory organization rules. Each member of the IPO team has specific responsibilities to fulfill. Members of your team will advise you with regard to their specialty; however, you must decide what is best for your company. Ultimately, the company calls the plays for the team.

**Present proposal to the board.** The IPO process begins with management making a presentation to the board of directors, complete with business plan and financial projections, proposing that the company enter the public market. The board should consider the proposal carefully.

**Restate financial statements and refocus the company.** If the board approves the proposal to go public, your company's books and records should be reviewed for the past five years. Financial statements should be restated to adhere to Generally Accepted Accounting Principles (GAAP), in order for them to be certified. Any intracompany transactions, compensation arrangements, and relationships involving management or the board which are customary to a private enterprise but improper for a public company must be eliminated and the statements appropriately restated. Also, you should consider whether the market will perceive negatively any operations affiliated operations tangential to your company's core business.

**Find an underwriter and exchange a “letter of intent.”** At this point, your company should select an underwriter if it has not already engaged one (see “Choosing an Investment Banker” in Chapter 2), and formalize your relationship with the underwriter through a “letter of intent,” outlining fees, ranges for stock price and number of shares, and certain other conditions.

**Draft prospectus.** After the letter of intent is exchanged, your attorneys should begin work on the prospectus (see pages 17-18 of this chapter).

**Respond to “due diligence.”** The next step is to ask your investment banker and accountant to begin an elaborate investigation of your company. Appendix D, Due Diligence Examination Outline, has a checklist of topics and procedures which serves as an aid in the due diligence process. Your underwriter will examine your company’s management, operations, financial condition, performance, competitive position, and business plan. Other factors open to scrutiny are your labor force, suppliers, customers, creditors, and any other parties that have a bearing on the viability of the company as a public entity and could affect the proper, truthful, adequate disclosure of its condition in the prospectus. The accounting firm will examine financial information and such specific documents as contracts, billings, and receipts to ensure the accuracy and adequacy of financial statements.

**Select a financial printer.** Your company should select an experienced financial printer – one who is familiar with SEC regulations governing the graphic presentation of a prospectus and has facilities to print sufficient quantities under severe time constraints.

**Assemble the “syndicate.”** After the preliminary prospectus has been filed with the SEC and is available for circulation among potential investors, your underwriter should assemble the “syndicate,” consisting of additional investment bankers who will place portions of the offering to achieve the desired distribution. Your underwriter should also accumulate “indications of interest” —solicited through its efforts as well as the syndicate’s—from institutions and brokers that have approached their clients. These give assurance that the IPO is viable and help to determine the final number of shares to be offered and the allocations to investors.

**Perform the “road show.”** Next, your company and your investment banker should design and perform the “road show,” a series of meetings held with potential investors and analysts in key cities across the country and if appropriate, overseas. The “road show” consists of a fairly elaborate formal presentation on the company’s operations, financial condition, performance, markets, and products and services delivered by the company’s top executives, who are then available for questions. The “road show” has become increasingly important not only to communicate key information to investors but also to display the managerial talent and expertise that will be leading the company.

**Prepare, revise, print the prospectus.** In the meantime, the preliminary prospectus should have been prepared and revised according to SEC and NASD Regulation comments, with NASD Regulation issuing a letter stating that it has no objections to the underwriting compensation, terms, and arrangements, and the SEC indicating its intent to declare the registration effective. The preliminary prospectus should be circulated to potential investors at least two days before the effective date; then the final version of the prospectus can be printed.

**Price the offering.** Just before the underwriting agreement is signed—on the day before the registration becomes effective and sales begin—the offering is priced. Your investment banker should recommend for your approval a price per share, taking into account your company's financial performance and competitive prospects; the stock price of comparable companies; general stock market conditions; and the success of the road show and ensuing expressions of interest. While your company will want as high a price as possible, an offering that does not sell or sell completely will not be in your best interest, or the best interest of irate investors who find the share price declining in the market immediately after their initial purchase. In fact, investors look for at least a modest increase in the market price to reassure them about their investment decision.

**Determine the offering size.** Your investment banker should also consult with you regarding the offering size, considering how much capital your company needs to raise, the desired degree of corporate control, and investor demand. Often, the more shares outstanding, the greater the liquidity of the stock, which will increase institutional interest. On the other hand, too great a public float may lower the price-to-earnings ratio to an unattractive level.

On the following page is an "Initial Public Offering Schedule" that indicates the various tasks involved in taking a company public, which team member has primary responsibility for each task, and the general time frame according to which the tasks are usually completed.

### Initial Public Offering Schedule

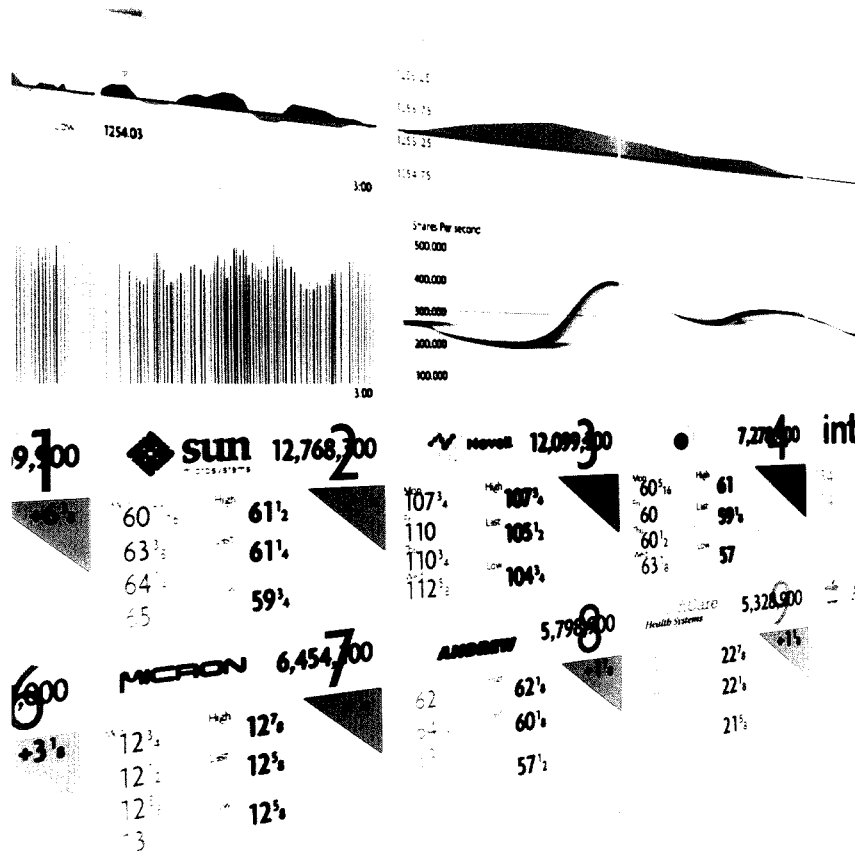
This schedule applies to a fully syndicated, fixed-price offering. The time frames are merely illustrative.

	2 years	1-6 months	1-3 months	1-4 weeks
<b>Company</b>	Act like a public company	Select the team; Execute letter of intent	Select printer & transfer agent	Executives perform "road show"
<b>Company Counsel</b>		Perform "house-keeping" of company records; Draft S-1; File w/ the SEC, file Nasdaq listing application	Prepare & file preliminary registration statement	Clear SEC comments
<b>Company CPA</b>		"Clean-up" and restate balance sheet; Prepare & review audited financial statements	Prepare draft "comfort letter"	Prepare updated financial statements, if necessary
<b>Investment Banker</b>		Assess market; Make presentation to board	Continue due diligence	Orchestrate "road show"; Solicit expressions of interest
<b>Investment Banker's Counsel</b>		Begin due diligence	Prepare NASD Regulation filing; Undertake "blue-sky" filings	Clear NASD Regulation comments
<b>Financial Printer</b>		Print preliminary registration statement/prospectus	Produce SEC & NASD Regulation "filing packages"	
<b>SEC</b>		Confer regarding "problems," if necessary	Review preliminary registration statement; Issue comment letter	
<b>NASD Regulation</b>		Request pre-filing advice, if necessary	Review preliminary registration statement; Issue comment letter	Resolve comments

Before Effective Date		After Effective Date	
1-10 days	1 day	5 days	0-30 days (optional)
Issue press release	Execute underwriting agreement	Provide certificates; Collect proceeds	Provide additional certificates; Collect additional proceeds
	Request acceleration; File final registration statement	Deliver documents/opinions	Update closing documents
Deliver draft "comfort letter"	Deliver final "comfort letter"	Deliver "bring down comfort letter"	Second "bring down comfort letter"
Form syndicate; Place "tombstone"	Execute underwriting agreement	Provide net proceeds	Exercise over-allotment option; Make determination about issuing research report
Continue due diligence		Assist in closing	Assist in second closing
	Print final registration statement/prospectus		
	Declare offering effective		
	Declare no objections		

# Selecting a Market:

## The Nasdaq Stock Market and Its Benefits

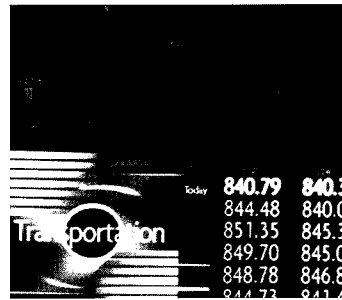


## Chapter

## 4

*Not all stock markets are the same, nor is one stock market appropriate for all types of companies. Markets vary by listing requirements (to begin trading) and maintenance standards (to continue trading), as well as by their rules and regulations governing trading, reporting, and settlement. Stock markets also vary according to market structure and trading mechanisms. The choice of market for a company undergoing its IPO is a strategic financial decision. It is important to choose the best market for your company—the one that most effectively enhances the attractiveness of your stock to investors and broker/dealers, and best meets your needs as you fulfill your responsibilities as a public company.*

*This chapter provides you with an overview of the distinction between The Nasdaq Stock Market and other markets. It also provides a brief summary of the benefits provided to Nasdaq-listed companies.*



	Today	840.79	840.3
		844.48	840.0
Transportation		851.35	845.3
		849.70	845.0
		848.78	846.8
		844.73	841.4

### Types of Securities Markets

**Screen-based versus floor-based.** On a screen-based market like Nasdaq, trading is executed electronically through the means of a huge and highly sophisticated computer network. There is no physical trading "floor," like that of an exchange. Instead, traders can access the market on screen, through desktop computer terminals from anywhere in the world. Without size limitations or geographical boundaries, screen-based markets are able to accommodate an unlimited number of buyers and sellers willing to trade in a company's stock. Floor-based markets, on the other hand, are designed to take incoming stock orders, channeling trades through a single person, or specialist. In essence, floor-based markets wait for capital to come to the market, while screen-based markets bring the market to companies in need of capital.

**Multiple Market Participants vs. Specialist.** Screen-based markets enable numerous participants to trade stock in a company. On Nasdaq, these participants are divided into two groups: Market Makers and electronic communications networks (ECNs). Market Makers are independent dealers who compete for investors' orders by displaying their buy and sell quotations on Nasdaq. Because each Market Maker has equal access to Nasdaq's trading system, their quotations are simultaneously broadcast to all market participants. When an order is received, a Market Maker will immediately purchase for or sell from their own inventory, or seek the other side of the trade until it is executed, often in a matter of seconds.

ECNs are trading systems which offer Market Makers and institutional traders an anonymous way to enter orders into the marketplace. As Nasdaq market participants, ECNs foster heightened competition among Market Makers and introduce greater liquidity to the market – the result of which yields better prices.

On floor-based markets, all stocks are routed through a single person, called a specialist. Specialists match and execute orders for a company's stock as they are received, trade for their own accounts, and formulate the public quote for the stock. Like Market Makers, specialists also make markets in a number of different companies' stock, but unlike Market Makers, they have exclusive rights to trade for those companies.

**Hybrid versus order-driven market.** Until recently, trading activity on Nasdaq was quotation-driven. Market Makers competed for investor orders by broadcasting their quotations – or offers to buy and sell stock – on screen. Since implementing new order handling rules in 1997, Nasdaq has evolved into a hybrid market, incorporating the best features of both quotation- and order-driven markets. Market Makers can now respond to both competing quotes and incoming buy and sell orders brought to the marketplace through ECNs, a direct result of incorporating the order handling rules into Nasdaq.

Floor-based markets, on the other hand, remain order-driven: specialists respond to the flow of incoming buy and sell orders which, if unbalanced, may affect their ability to make a market in a company's stock and necessitate a halt in trading. In some cases, if market participants cannot execute a trade through the specialist, they may bypass the floor of the exchange to find another investor.

## **Nasdaq Benefits**

**Increased visibility through Market Maker sponsorship.** Unlike the specialist, who functions primarily to match orders, Nasdaq Market Makers commit capital and resources to make a market in a company's stock, providing the stock visibility and immediate, continuous trading. In addition, many Market Maker firms offer a full range of services to generate interest among investors. These services include distributing research reports on the stocks they trade, seeking buyers and sellers among retail networks and institutional sale representatives, and underwriting – helping companies with initial public offerings.

**Greater market depth.** Compared to floor-based exchanges, Nasdaq offers greater depth of market, or the total number of buyers and sellers related to the amount of capital committed to a stock. With a structure of multiple market participants, Nasdaq ensures companies of greater available capital and more continuous trading in their stocks. Knowing there are willing buyers and sellers in the marketplace reassures investors of a stock's marketability, especially during periods of heavy trading volume. Nasdaq's market depth is further enhanced by ECNs, which bring additional buyers and sellers into the marketplace.



In traditional floor-based markets specialists may trade from their own account, with a single specialist making a primary market for a company's stock. Capital is derived from that one specialist's firm's resources – which is typically allocated among numerous stocks. During periods of heavy volume, if order imbalances occur and the specialist's account cannot handle the overflow, the specialist may halt trading to match buyers and sellers. No halts for order imbalances occur on Nasdaq. Market Makers absorb the imbalances by committing their own capital.

**Greater liquidity.** Nasdaq's market structure can provide a company's stock greater liquidity – the ease with which a stock market can absorb volume buying and selling without dramatic fluctuations in price. This gives investors confidence in the ownership position they have taken in a company.

Market Makers build liquidity by committing capital to support immediate and continuous trading in a company's stock. This role provides more buying and selling opportunities for investors, since they do not have to wait for the other side of their trade to be found. ECNs add to the market's liquidity by bringing additional orders into Nasdaq.

**Price efficiency through competition.** In securities trading, competition is one of the most important factors in creating price efficiencies. The aggressive competition for orders fostered among Nasdaq's Market Makers and all market participants helps to ensure investors the best price for the stocks they purchase.

In 1997, Nasdaq implemented new order handling rules which have enhanced price efficiency and made the market even more responsive to the needs of investors. In combination with Nasdaq's move to quoting in 1/16ths, these rules have resulted in an average spread reduction of more than 40%.

The new rules also allow investors to have their best-priced limit orders – orders to buy or sell stock at a specified price – displayed to all market participants. When priced better than Market Makers' quotes, investors' limit orders can now set the inside spread (the difference between the best buy and sell price).

**Quality listing requirements.** The Nasdaq National Market's stringent entry and maintenance standards for public companies – in terms of both financial guidelines and corporate governance standards – distinguish a company as a quality investment. See Appendix A for a detailed listing of these requirements.

**Market analysis and investor relations informational resources.** Nasdaq provides its Nasdaq National Market companies with a variety of information services to aid them in their corporate finance decision-making and investor relations programs.

#### **Quality Personal Service**

- Prior to listing, Nasdaq assigns prospective National Market companies with a Business Development Director, who:
  - serves as a direct liaison between the company and The Nasdaq Stock Market
  - provides consultation on going public and listing on Nasdaq
  - provides customized analyses of company peers on Nasdaq and other exchanges
  - will present the benefits of The Nasdaq Stock Market to the company's executive management team and board of directors

- After listing on Nasdaq, each Nasdaq-listed company is provided with a Director of Nasdaq Company Services, a primary day-to-day contact who:
  - is knowledgeable on finance and market matters
  - is qualified to answer questions on the performance of a company's stock
  - can help companies develop customized investor relations programs
  - can keep companies abreast of industry-related issues and rule changes

#### **Strategic Tools for Equity Management**

- Nasdaq Online<sup>SM</sup> delivers online market intelligence exclusively to companies listed on The Nasdaq Stock Market. As one of Nasdaq's primary Web-based services, Nasdaq Online was developed following months of research into corporate executives' information needs.
- Nasdaq Online serves as an effective tool for strategic decision-making, helping companies manage relationships with analysts and providing access to market commentary. At a glance, users can see how their stock is trading, follow their competitors, and track the market's activity at any given moment. Continually updated, Nasdaq Online also offers a real-time data and report generator to assist company executives in preparing presentation-quality materials for institutional investors and board members.

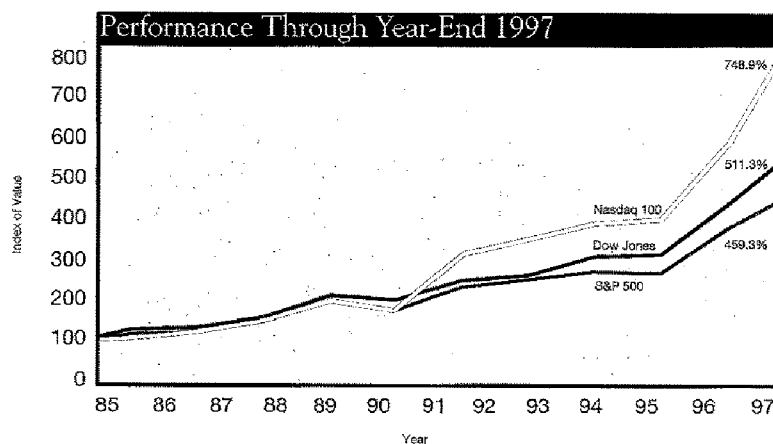
#### **Outreach to Investors**

- Nasdaq's Web site, [nasdaq.com](http://nasdaq.com), is one of the top sources of financial information on the Internet, averaging 10 million hits a day. The Nasdaq Stock Market has gone to great lengths to reach out to investors through [nasdaq.com](http://nasdaq.com), providing a wide range of information and direct links to more than 2,800 Nasdaq-listed companies.
- Nasdaq.com can increase a company's visibility among individual investors by offering continuous, accurate price quotes (15-minute delay), market news, historical charting and analyst recommendations. Shareholders can use [nasdaq.com](http://nasdaq.com) to track their portfolios or link directly to a company's Web site.
- Nasdaq.com provides the following information for Nasdaq-listed companies:
  - A one-page printable company stock report featuring up to five years of sales, net income and earnings-per-share information as well as summaries of income statements and balance sheets for the previous four quarters.
  - Company stock quotes (15-minute delay).
  - Company specific news from PR NewsWire, BusinessWire, Reuters, and MSNBC.
  - Intraday and historical charting of daily closing price and share volume for 3-, 6-, 12-, 24-, 36-, and 60-month intervals.
  - Direct links to a company's online filings with the SEC's EDGAR database.
  - Links to web sites for company and product information.
  - A company LogoTicker<sup>TM</sup> that helps investors quickly identify a company's stock information.

#### Informative Programs

- Nasdaq National Market company executives are frequently invited to Nasdaq-sponsored investor relations and financial management programs. These programs are designed for a company at every stage of its lifecycle. Topics include:
  - Understanding The Nasdaq Stock Market
  - Disclosure and safe harbor
  - Communication to shareholders
  - Shareholder litigation
  - Managing expectations of the street
  - Corporate governance
  - Reaching international investors

**Strong market performance.** The Nasdaq Stock Market is known for its innovative, forward-looking growth companies. Investors anticipate attractive returns with such companies and routinely look to Nasdaq for these opportunities. By going public on Nasdaq, your company can join other industry leaders in being associated with the best-performing and fastest-growing stock market in the world.

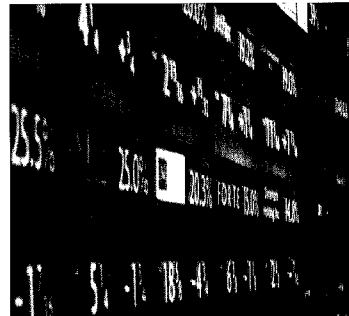


Source: FactSet Research Systems



*Once your company has gone public, its capital raising ability will depend largely on the investing public's valuation of its worth as reflected in its share price. Even the availability, magnitude, and terms of nonequity financing will be influenced by the stock market's assessment of your company's prospects.*

*Companies most successful in attaining optimum market valuation view their stock as another product or service that they provide customers, in this case, investors. They market this product—in essence, the company itself—through a well-conceived and well-executed investor relations program.*



### **Objectives of an Investor Relations Program**

#### **Make the stock attractive as an investment product.**

Given that investors have a wide variety of alternatives in which to put their money, a public company must position its stock in the forefront of attractive investment opportunities. Such positioning will range from promoting the company to enhancing the investment vehicle itself through the institution of regular dividends, stock buy backs, or stock splits.

**Attain and maintain the highest sustainable price for the stock.** Share price must always be considered in relation to your industry, earnings history, growth, and growth potential.

**Achieve a price-to-earnings ratio above the industry average.** A price-to-earnings multiple commensurate with your company's performance, but above the average for its industry sector, will distinguish it as a superior equity investment.

**Build a broad and diversified shareholder base.** You will want as broad and diversified a shareholder base for your company as is appropriate for its size, age, customer base, and market position. Such a roster of shareholders increases the company's visibility before other investors as well as professions serving the company, its business associates, and customers. Smaller companies may prefer a regional shareholder population, while those doing business nationally and internationally may want investors across the country and overseas.

**Attract an appropriate shareholder mix.** Primarily for the purpose of corporate control, you will want a balance of individual and institutional shareholders. Although individual investors are usually expected to be more loyal than institutions, you should keep in mind that many individuals now invest in stocks through mutual funds. Conversely, in our age of shareholder activism, institutional investors now frequently view their sizable stock investments as long-term positions in a company, whose strategic policies they will attempt to influence.

**Build a liquid but stable trading market for the stock.** Although it may now be somewhat more difficult to identify investor predilections, you nevertheless will want to encourage an appropriate level of trading activity in your stock to keep it a liquid investment while avoiding volatility that will scare away potential investors. You can achieve suitable liquidity by attracting the desirable mix of shareholders: short-term investors who buy your stock looking to capture periodic trading profits, and long-term investors who hold the company's stock through periods of unusually weak or strong performance.

**Preserve a ready market for the company's securities for future capital raising.** Your company should be sufficiently known and appreciated by the investment community so that secondary stock offerings or bond issues, however substantial, can be readily sold to retail investors or placed with institutions. In this way, strategic financial management depends directly on effective investor relations for its success.

## Strategies for Audiences

**Shareholders—retail.** The individual shareholder still tends to be the most loyal to a company. While rewarding shareholders with good results is certainly most effective in securing that loyalty, the way your company routinely treats the individual investor will be decisive during periods of weak performance. Your public company needs to make the individual investor feel included among the company's priorities. Such concern can be demonstrated through clear, honest, timely communications. In addition to the printed materials sent by your company, these shareholders will be influenced primarily by their brokers and securities analyst reports, followed by media coverage.

**Shareholders—institutional.** Increasingly, the sophisticated, skeptical institutional investor needs to be reassured of management's capabilities and the wisdom of their strategic plan. While most investment managers are results-oriented, the influence of shareholder activists has lengthened the traditional time horizon for many. In return for their patience, today's institutional investors expect an audience on, if not influence over, strategic decisions. Your company can help to solidify its position with its institutional shareholders by initiating and maintaining a continual dialogue. Institutional managers supplement their own analyses of companies with sell-side securities analyst research as well as that of in-house buy-side analysts, in addition to consulting with investment bank sales representatives.

**Securities analysts.** The most probing and incisive of a public company's audiences, securities analysts are particularly dependent on their reputation for the "correct call." Your company can give them confidence in their assessments by mobilizing for them publicly available information on the company's situation and direction. Inform analysts promptly and fully of all material developments; provide honest, focused, even detailed replies to their questions; and send useful strategic, operational, market, and product information and statistical data. Your company should position itself with analysts by suggesting appropriate criteria by which it should be appraised—indexes, ratios, competitors, markets—lest the analyst judge the company by standards that are not entirely relevant. To facilitate communication, your company should offer analysts a daily contact—perhaps an investor relations officer—for routine inquiries, frequent access to the Chief Financial Officer or ranking financial executive for financial policy and condition, and periodically the Chief Executive Officer for discussions of strategic direction. Given the analyst's considerable influence over institutional investors and brokers, your company should provide them with as much information as is commensurate with its business interests and the securities laws. Your company should present itself in the best possible light without making qualitative statements that are more properly the domain of the analyst, avoid revealing competitive information, and never make the analyst privy to material information that has not yet been publicly disclosed—which will have the effect of silencing that analyst until the announcement is made.

**Stock brokers.** Retail stock brokers have considerable influence over the individual investor, and the "big producers" command the attention of their peers. Because they must sell a variety of equity investment alternatives to numerous customers, time constraints prevent brokers from acquiring an analyst's in-depth knowledge on any one company and from imparting such detail to their customers. Consequently, they place their trust in analysts they respect, their sales managers, and their own judgment. Nevertheless, your company can adapt its communications strategy to brokers' requirements by supplying them with a few succinct, compelling selling points about its stock, which will convince the brokers and, in turn, help them to convince their customers.

**Business media.** Journalists covering business news are concerned about truthfulness, incisiveness, exclusivity, novelty, originality, and independence. They want to report accurate news about your company, be the first or among the first to do so, and yet not appear to be an extension of your company's marketing program. Moreover, their deadlines are often a matter of hours, sometimes minutes. Your company always needs to be prepared to supply them with accurate information quickly and succinctly, preferably in quotable statements or phrases. At the same time, your

company must endeavor to present itself in the most favorable terms. Finally, its spokespeople must be schooled in handling series of probing questions journalists tend to ask in order to ferret out what they feel is the “real story” or any weaknesses with which they can balance the strengths.

Relationships should be developed with journalists covering your company's industry for the most prominent business publications. Build these relationships by trying to provide journalists with helpful information. Present spokespeople as sources of information on the industry as well as your company. Suggest cutting-edge story ideas that may or may not involve your company as well as additional sources of information outside your company. This approach will actually increase the frequency of your company's coverage as well as its fairness.

**Market Makers.** For Nasdaq companies, how well their stock trades will depend, after investor interest, on the quality of the market that its Market Makers create for them. Are the bid and ask quotations competitive with other comparable stocks and with other Market Makers in your stock? Your company should generate continuing interest in its stock with Market Makers by alerting them to corporate developments or programs that may increase investor demand and trading volume. Acquiring additional Market Makers, through presentations, will draw further attention to the stock and create more activity.

## Tactics

**Corporate brochures and Web sites.** All of your company's written and electronic communications – the style of language and graphic design as well as their content – are a major source of your company's image. The annual report is as much a marketing initiative as it is a legal document. Your company can supplement its routine communications with an attractive corporate brochure and corporate Web site that defines the company, articulates its strategy, presents its operations, and profiles its top executives. Send the corporate brochure to all audiences and revise it regularly and update your Web site with current information on a continual basis.

**News releases.** News releases reporting material developments are required by law to satisfy disclosure requirements to the investing public. A company is customarily considered to have made a good faith effort at disclosure when it sends a release to the market on which its stock is traded, the major news wires (Dow Jones, Reuters), paid news wires (PR Newswire, Business Wire), and the major national newspapers (The Wall Street Journal, The New York Times), and the major newspaper of the city where it is headquartered. In addition, your company will want to send a release to its regular press list, which will include other wires such as the Associated Press and United Press International, business information services such as Standard & Poor's and Bloomberg, business magazines, trade publications, and regional and local newspapers where your company does business or has investors. They can also be sent directly to your analysts. It is imperative for your company to inform the financial community regularly of its performance, reporting favorable and unfavorable material developments promptly. Not only does this build your company's credibility, but it also may help prevent shareholder class action lawsuits that tend to be precipitated by sharp declines in share price. Adequately preparing the market for bad news over time will help to effect a gradual, rather than precipitous, decline in stock valuation.



**Backgrounders and fact sheets.** One-page discussions of important corporate developments, operations, products, markets, industry, personnel, ecological and social programs, charitable contributions, sponsored community events, and corporate history, as well as one-page presentations of factual and statistical information on operations and performance with charts and graphs can serve as effective periodic direct mailings in themselves or may be used to customize an information package for particular occasions. Although usually intended for press distribution, backgrounders and fact sheets—succinct, well-organized, and easy to use—are effective communications tools with brokers and other audiences under severe time constraints.

**Shareholder letters from corporate officers.** Occasional letters from the chairman of the board or the chief executive officer to shareholders on developments of strategic importance strengthen your company's relationship with them. These letters can be particularly effective in times of crisis and can reassure during periods of weak performance.

**New shareholder welcome letters and telephone calls.** An individual's new investment in your company provides the opportunity not only for a welcome that will help to engender loyalty but also to familiarize the investor with your company through accompanying materials. For institutional shareholders taking large positions, a telephone call offering any assistance in the future can be an appropriate beginning to a long-term relationship.

**Institutional shareholder visits.** Regular, periodic visits by your company's ranking financial officer or chief executive to institutional shareholders will indicate that the company values them and demonstrate that their advice on strategic direction will be taken into consideration. While these executives should be prepared for difficult questions, such meetings can diminish the possibility of more direct, public confrontations. Executives must be careful, however, not to reveal nonpublic material information.

**Shareholder surveys.** Occasional surveys of shareholders, individual and institutional, can give insight into the preoccupations and objectives of investors regarding strategic direction, operations, and investment goals and requirements, as well as such shareholder-oriented initiatives as dividends and stock splits. They are also persuasive evidence of the company's commitment to shareholder satisfaction.

**Analyst group meetings.** Your company can regularly schedule analyst group meetings in those financial centers containing large concentrations of its analysts. The frequency of these meetings depends on the size of your company and the strength of its following, though quarterly is recommended. If analyst coverage is modest, individual meetings may be more appropriate. Plan group presentations carefully and use slides, video, or other visual aids. Schedule time to field questions, and distribute a transcript of the presentation and hard copy of visuals, if possible, or substitute charts and graphs. Some of these techniques may also be appropriate for individual meetings. It is advisable not to have joint analyst/press meetings, because the questioning will often be at cross purposes and the company risks leaving a confused impression on both audiences. Be sure that all statements your company's representatives make at these meetings consist of public information.

**Analyst trade association presentations.** Analysts belong to national, regional, and local trade associations and specialty groups focusing on specific industry sectors. These associations regularly sponsor forums for company presentations or will cooperate with companies to arrange such meetings. Not only will such presentations keep your company's regular analysts up to date, they may also attract others to your company.

**Analyst on-site company tours.** Inviting analysts to well-planned visits of company headquarters or facilities can help build a positive company image, for instance, by reinforcing statements about modern plant and efficient operations; effective, well-trained personnel; or visible cost-reduction measures. While your company must make sure that nonpublic, material information or trade secrets are not on display, analysts can be introduced to a wide range of information firsthand. Such visits build good will and instill confidence as they serve to inform.

**Analyst prospecting.** Companies may wish to increase their analyst following through several initiatives. A direct mail campaign targeted at particular regions of the country where increased coverage is desired to attract investors is an inexpensive method. Indications of interest can be followed by regular informational mailings. Perhaps more effective, if more expensive and time-consuming, is a telephone survey eliciting degrees of interest and desired channels of communication. Most effective is to target particular key analysts for office visits and presentations by corporate officers.

**Broker mailings.** Although stock brokers generally seek their decision-making information from other sources, selective corporate mailings of the annual report and certain fact sheets will serve as a useful reminder of your company.

**Broker sales manager meetings.** Scheduling succinct, well-planned presentations to sales managers that direct large retail brokerage operations can result in an increase in the attention paid to your company by a substantial number of their sales force.

**Media interviews.** Scheduling interviews with journalists for information only, rather than for an article, may actually bring about a future article at the same time that it helps to strengthen the relationship. Be sure to inform the journalist what topics your company's spokesperson is prepared to discuss and obtain an understanding whether the interview is "on the record"—statements are quotable and for attribution to your spokesperson—or "off the record" and unquotable, even without attribution. Speaking off the record to a journalist can be risky; misunderstandings may arise regarding availability for quotation; you cannot control the use to which the information will be put nor to whom it will be communicated; and you sacrifice interview time that can be used to make statements that can be quoted. Corporate spokespeople do well to observe the following rule: if you don't want to see it in print, don't say it. Prepare the spokesperson by providing any necessary information on those topics and organizing their thoughts into succinct bullet points. Also, formulate a list of positive and negative questions on the topics and the company in general. Stage a mock interview for less experienced spokespeople. Caution spokespeople to stop talking when they have answered a question to their satisfaction: running on will run them into trouble.

**Press briefings.** Press briefings attract their best attendance when held in conjunction with a significant corporate event or announcement, but they can also be effective when organized around a topic of particular interest.

Your company can invite other companies from your industry or related industries or professions to participate. Brief presentations followed by a question and answer session are the norm. Breakfast or luncheon meetings are most time-efficient for journalists. Follow-up mail invitations and telephone calls with reminder calls the day before the event. Keep in mind that the drawback to press briefings from a journalist's point of view is that any question they ask and the resulting answer are available for all others attending to quote, whereas the same question and answer in an interview is their exclusive. Remember too that such an interview will probably be available to them by telephone. Attendance at press briefings may therefore seldom be what you might expect. The presence of ranking corporate officers at the same place at the same time, ones to whom most journalists would not have easy access, is a major draw.

**Market Maker trading-room visits.** For Nasdaq companies, periodic visits by one of your company's top executives to your Market Maker at the firm's trading room can give your stock a face and personality, as well as provide an opportunity to communicate valuable information, answer questions about the company, and acquire insight into traders' concerns. Be sure to go only at the end of the trading day, after 4 p.m., Eastern Time (ET). Before trading begins at 9:30 a.m., ET, traders are busy in briefing meetings, formulating strategy, and reviewing positions.

**Market Maker mailings.** To reinforce the relationship established by periodic visits, your company can mail an occasional backgrounder or fact sheet as well as news releases to Market Makers. This information will probably not be new to the trader, who will receive wire reports up to the minute that may affect the market, but they are a reminder of certain important facts or events in permanent form.

**Market Maker solicitation.** Your company should identify potential new Market Makers for its stock. At first, you may want to target those firms that already make a market in the stocks of companies in your industry. Arrange a presentation to the executive in charge of equity trading, the head trader, and any others interested. Sometimes traders can be included in presentations made to the firm's analysts. Follow up the presentation with a telephone call to see if the firm wants further meetings with other decision-making executives and begin timely mailings of corporate information.

**Executive participation in industry trade associations and business-related organizations.** Investors are attracted to companies that assume a leadership position in their industries, and exposure that top executives receive in trade associations and business groups can complement a company's climb in market share.

## Measurements of Success

**New shareholders.** Is the number of individual and institutional shareholders increasing?

Adjustments in your company's investor relations program can be made to increase either group, or both.

**Total shareholders.** Is this number increasing or decreasing? What is the rate of increase or decrease per year? While market conditions and corporate events will have an effect on this number, a decrease does have implications for corporate control and future securities sales. Your company may wish to broaden the target audiences of its investor relations program.

**Number of analysts following the company.** A modest annual increase in the number of analysts producing reports on your company is desirable. Just as important, your company should gradually be securing the following of the most well-known and well-respected analysts in its industry sector.

**Number of stock brokers recommending the stock.** A decrease in this number may call for increasing efforts to reacquire brokers with the company if the decrease cannot be accounted for by your company's industry being temporarily out of favor or substantial problems at the company.

**Price-to-earnings ratio.** Is your company's price-to-earnings multiple maintaining a position above the industry average? Is it increasing or decreasing over time? In line with the rest of the industry or counter to it? More work focused on increasing the market's valuation of your company's stock may be needed.

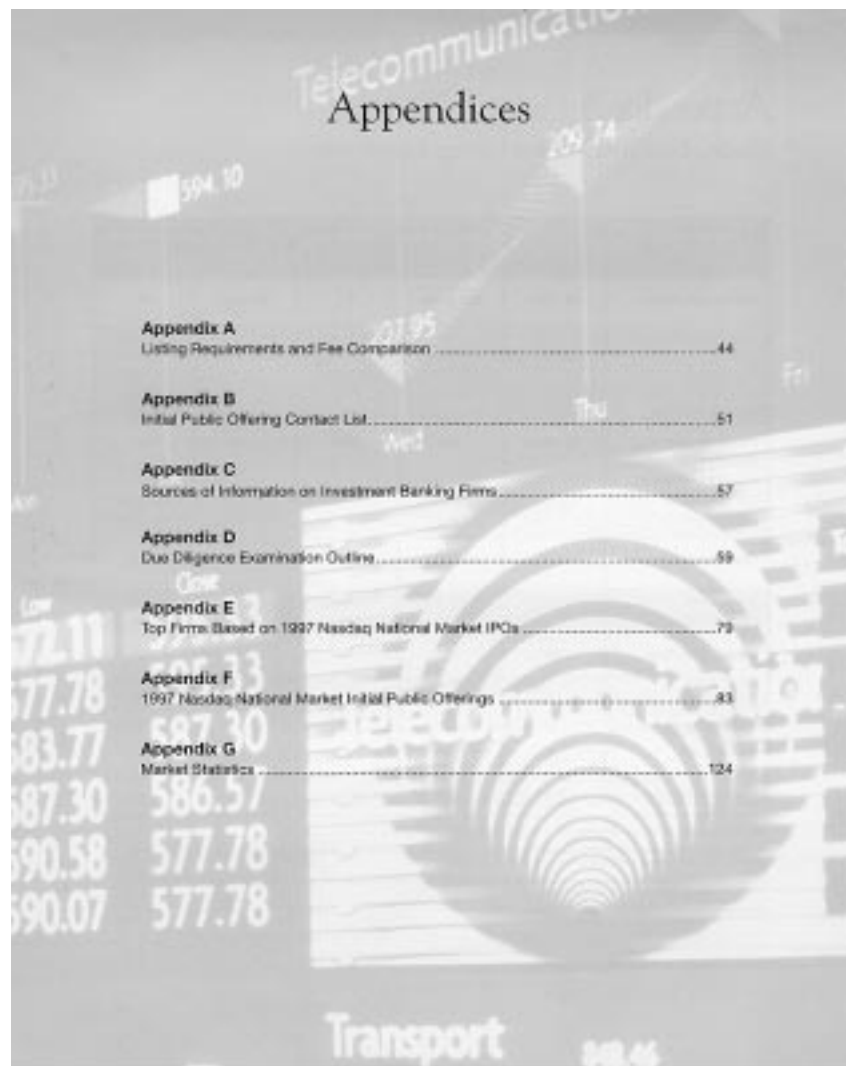
**Average trading volume.** Your company needs to monitor trading volume daily, particularly block volume, as a barometer of market sentiment and for advance notice of threats to corporate control. Too little trading volume can be remedied by generating more interest in the stock, while unusually large volume may require that your company identify market rumors and perhaps issue information that—directly or indirectly, depending on the rumor—responds to them.

**Number of Market Makers trading stock.** This number will fluctuate in part as a result of general market conditions and internal business factors in individual Market Making firms. If losses occur, your company may need to emphasize initiatives to strengthen and expand its Market Maker relationships.

**Number and quality of inquiries to the company.** The number of inquiries to your company over time will indicate in itself the range and intensity of your investor relations program. These inquiries can be analyzed further according to audience and geographical region. The quality of these inquiries—how much knowledge of your company, its industry, and the stock market is evident—will indicate the degree to which your investor relations messages are being understood. To a certain extent, your company must educate its audiences—observing the appropriate level of sophistication and tact—not only about your company's characteristics but also about its industry as well as the general business and economic environment, and even stock and bond investing.

**Conclusion**

The transition from a private company to a public company is a tremendous undertaking. However, once you have decided to take your company public, it is important to begin “acting like a public company” early on. As mentioned in this publication, there will be a lot of time, expense, and labor devoted to this effort and it will continue to demand resources as you enter the public market, but once your company goes public, your team and your company will be prepared.



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## Appendix A

### Nasdaq National Market Listing Requirements

Requirements	Initial Listing 1	Initial Listing 2	Initial Listing 3	Continued Listing 1	Continued Listing 2
Net Tangible Assets <sup>1</sup>	\$6 million	\$18 million	N/A	\$4 million	N/A
Market Capitalization <sup>2</sup>	N/A	N/A	\$75 million or \$75 million and \$75 million	N/A	\$50 million or \$50 million and \$50 million
Total Assets					
Total Revenue					
Pre-tax Income (in latest fiscal year or 2 of last 3 fiscal years)	\$1 million	N/A	N/A	N/A	N/A
Public Float (shares) <sup>3</sup>	1.1 million	1.1 million	1.1 million	750,000	1.1 million
Operating History	N/A	2 years	N/A	N/A	N/A
Market Value of Public Float	\$8 million	\$18 million	\$20 million	\$6 million	\$15 million
Minimum Bid Price	\$5	\$5	\$5	\$1	\$5
Shareholders (round lot holders) <sup>4</sup>	400	400	400	400	400
Market Makers	3	3	4	2	4
Corporate Governance	Yes	Yes	Yes	Yes	Yes

<sup>1</sup> Net tangible assets means total assets (excluding goodwill) minus total liabilities.

<sup>2</sup> For initial listing under option 3 or continued listing under option 2, a company must satisfy one of the following to be in compliance: the market capitalization requirement or the total assets and the total revenue requirement.

<sup>3</sup> Public float is defined as shares that are not held directly or indirectly by any officer or director of the issuer or by any other person who is the beneficial owner of more than 10 percent of the total shares outstanding.

<sup>4</sup> Round lot holders are considered holders of 100 shares or more.

## New York Stock Exchange Minimum Quantitative Standards

<b>Shareholders (A,B)</b>		
Round-lot Holders (holders of a unit of trading – generally 100 shares)		2,000
or:		
Total Shareholders		2,200
...together with		
Average Monthly Trading Volume (for the most recent six months)		100,000 shares
or:		
Total Shareholders		500
...together with		
Average Monthly Trading Volume (for the most recent twelve months)		1,000,000 shares
<b>Public Shares (B)</b>		1,100,000
<b>Market Value of Public Shares (B,C)</b>		\$40,000,000
<b>Net Tangible Assets (D)</b>		\$40,000,000
<b>Demonstrated Earning Power Over Three Most Recent Fiscal Years</b>		
Most Recent Year	Pre-Tax Income (E)	\$2,500,000
Each of the Two Preceding Years	Pre-Tax Income	\$2,000,000
or:		
Aggregate for the Three Years	Pre-Tax Income	\$6,500,000
Minimum in the Most Recent Year (all three years must be profitable)	Pre-Tax Income	\$4,500,000
or:		
For companies* with not less than \$500 million in market capitalization and \$200 million in revenues in the most recent fiscal year:		
Aggregate for the Three Years (each year must report a positive amount)	Adjusted Net Income (F)	\$25,000,000

\* This standard is designed to provide the opportunity for substantial companies that are valued more on the basis of "cash flow" than reported income to list on the NYSE. In applying this standard, the NYSE will consider each company on a case by case basis and will look not only at the specifics of the company's business but will also look to its industry, peer group and other relevant factors in performing its due diligence.

- (A) The number of beneficial holders of stock field in "street name" will be considered in addition to the holders of record. The exchange will make any necessary check of such holdings that are in the name of Exchange member organizations.
- (B) In connection with initial public offerings, the NYSE will accept an undertaking from the company's underwriter to ensure that the offering will meet or exceed NYSE standards.
- (C) Value is subject to bi-annual adjustment based upon the value of the NYSE composite index as compared with the index in 1971, the base year. Adjustment is limited to a maximum reduction of 50%.
- (D) While greater emphasis is placed on market value, an additional measure of size is \$40,000,000 in net tangible assets.
- (E) In all cases, Pre-Tax Income is before federal income taxes and under competitive conditions.
- (F) Net income adjusted to remove the effects of all items whose cash effects are investing or financing cash flows (determined pursuant to paragraph 29(b) of Statement of Financial Accounting Standards No. 95, Statement of Cash Flows, subject to certain limitations, as follows). The adjustment to net income with respect to the cash effects of discontinued operations, the cumulative effect of an accounting change, an extraordinary item or the gain or loss on extinguishment of debt will be limited to reversing the amount charged or credited in determining net income for the period.

Source: New York Stock Exchange



## American Stock Exchange Financial Guidelines

	Regular	Alternate	
Pre-tax income	\$750,000 latest fiscal year or 2 of most recent 3 years	---	
Market value of public float	\$3,000,000	\$15,000,000	
Price	\$3	\$3	
Operating history	---	3 years	
Stockholders' equity	\$4,000,000	\$4,000,000	
Distribution Guidelines (applicable to regular and alternate guidelines)			
	Alternate 1	Alternate 2	Alternate 3
Public Float	500,000	1,000,000	500,000
Stockholders	800	400	400
Average Daily Volume	—	—	2,000

Source: American Stock Exchange

## Entry Fee Comparison: Major U.S. Stock Markets

Number of Shares	Nasdaq National Market	NYSE	Amex
Up to 1 Million	\$34,525	\$51,550	\$10,000
1+ to 2 Million	38,750	51,550-66,300	15,000
2+ to 3 Million	48,750	66,300-73,700	20,000
3+ to 4 Million	53,750	73,700-81,100	22,500
4+ to 5 Million	60,000	81,100-84,600	25,000
5+ to 6 Million	63,725	84,600-88,100	27,500
6+ to 7 Million	66,875	88,100-91,600	30,000
7+ to 8 Million	69,375	91,600-95,100	32,500
8+ to 9 Million	72,875	95,100-98,600	35,000
9+ to 10 Million	75,625	98,600-102,100	37,500
10+ to 11 Million	78,875	102,100-105,600	42,500
11+ to 12 Million	81,625	105,600-109,100	42,500
12+ to 13 Million	84,875	109,100-112,600	42,500
13+ to 14 Million	87,000	112,600-116,100	42,500
14 to 15 Million	88,500	116,100-119,600	42,500
15+ to 16 Million	90,500	119,600-123,100	50,000
16+ to 20 Million	95,000	123,100-137,100	50,000
20+ to 25 Million	95,000	137,100-154,600	50,000
25+ to 50 Million	95,000	154,600-242,100	50,000
50+ to 75 Million	95,000	242,100-329,600	50,000
75+ to 100 Million	95,000	329,600-417,100	50,000
100+ to 125 Million	95,000	417,100-504,600	50,000
More than 125 Million	95,000	504,600*	50,000

The original listing fee for Amex and NYSE is based on the total number of shares listed, including all shares issued and outstanding, as well as shares reserved by the Board of Directors for a specific future issuance. The original fee for Nasdaq National Market is based on total shares outstanding.

**Fees include one-time initial listing charges of \$5,000 for Amex, \$36,800 for NYSE, and \$5,000 for Nasdaq National Market.**

\* The initial fee component of the original listing fee for common shares will be charged only on the first 125 million common shares listed.

Sources: American Stock Exchange, New York Stock Exchange, and The Nasdaq Stock Market.

## Annual Fee Comparison: Major U.S. Stock Markets

Number of Shares	Nasdaq National Market	NYSE	Amex
Up to 1 Million	\$10,710	\$16,170	\$8,500
1+ to 2 Million	10,960	16,170	7,000
2+ to 3 Million	11,210	16,170	7,500
3+ to 4 Million	11,460	16,170	8,000
4+ to 5 Million	11,710	16,170	8,500
5+ to 6 Million	11,960	16,170	9,000
6+ to 7 Million	12,210	16,170	9,500
7+ to 8 Million	12,460	16,170	10,000
8+ to 9 Million	12,710	16,170	10,500
9+ to 10 Million	12,960	16,170	11,000
10+ to 11 Million	17,255	24,260	11,500
11+ to 12 Million	17,505	24,260	12,000
12+ to 13 Million	17,755	24,260	12,500
13+ to 14 Million	18,005	24,260	13,000
14+ to 15 Million	18,255	24,260	13,500
15+ to 16 Million	18,505	24,260	14,000
16+ to 20 Million	18,755	24,260	14,500
20+ to 25 Million	22,795	32,340	14,500
25+ to 50 Million	26,625	32,340 - 43,140	14,500
50+ to 75 Million	32,625	48,410 - 63,890	14,500
75+ to 100 Million	43,125	63,890 - 84,840	14,500
100+ to 200 Million	50,000	84,840 - 167,640	14,500
More than 200 Million	50,000	500,000	14,500

Newly listed Amex and NYSE companies are billed the annual fee on a pro-rata basis at the end of the calendar year in which they listed. Nasdaq National Market companies are billed the pro-rata annual fee at the end of the month in which they are listed.

## Five-Year Fee Comparison: Major U.S. Stock Markets

Fees	Nasdaq National Market	NYSE	Amex
Initial Entry Fee (One-Time Fee)	\$84,875	\$110,850	\$42,500
Annual Fee—Year 1 (12.5 Million Shares)	17,755	24,260	12,500
Annual Fee—Year 2 (12.5 Million Shares)	17,755	24,260	12,500
Declare 2:1 Stock Split	0	43,750	17,500
Annual Fee—Year 3 (25 Million Shares)	22,795	32,340	14,500
Acquisition Facilitated by 5,000,000 Share Issuance	17,500	17,500	17,500
Annual Fee—Year 4 (30 Million Shares)	26,625	32,340	14,500
Annual Fee—Year 5 (30 Million Shares)	26,625	32,340	14,500
Total	\$213,930	\$317,640	\$146,000

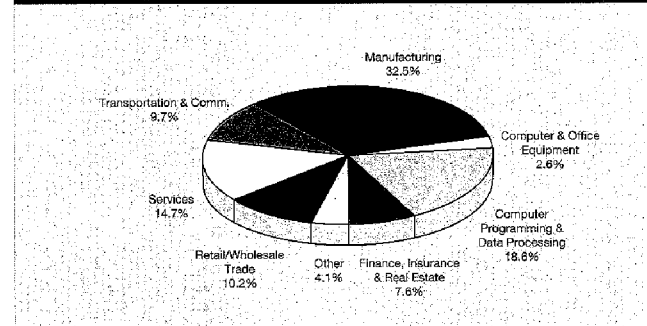
Five-year comparison for a company with 12.5 million shares outstanding and \$225 million in market capitalization.

### Nasdaq's National Market Profile

Assets	\$23,650,000
Revenues	\$25,450,000
Equity	\$33,150,000
Net Income	\$950,000
Market Value	\$92,350,000
Offering Value	\$32,000,000

Source: Securities Data Company, median values as of 12/31/97, firm commitment underwritings including spin-offs only, excludes closed-end funds

### 1997 Nasdaq IPOs by Industry



Source: Securities Data Company, median values as of 12/31/97, firm commitment underwritings including spin-offs only, excludes closed-end funds

## Appendix B

### Initial Public Offering Contact List

#### **The Nasdaq Stock Market**

1735 K Street, NW  
Washington, DC 20006-1500  
(202) 496-2600

33 Whitehall Street, 8th Floor  
New York, NY 10004  
(212) 709-2400

2500 Sand Hill Road  
Suite 220  
Menlo Park, CA 94025  
(650) 233-2000

Durrant House  
8/13 Chiswell Street  
London, England EC1Y 4XY  
+ 44-171-374-6969

Market Data Integrity  
Market Operations Department  
80 Merritt Boulevard  
Trumbull, CT 06611  
(203) 375-9609

Market Surveillance Department  
9513 Key West Avenue  
Rockville, MD 20850-3389  
(301) 590-6410

StockWatch  
9513 Key West Avenue  
Rockville, MD 20850-3389  
(301) 590-6411

#### **NASD Regulation, Inc.**

Corporate Financing  
1801 K Street, NW  
8th Floor  
Washington, DC 20006  
(202) 974-2700

#### **Securities and Exchange Commission**

Division of Corporation Finance  
450 5th Street, NW  
Washington, DC 20549  
(202) 942-2800

Division of Enforcement  
450 5th Street, NW  
Washington, DC 20549  
(202) 942-4530

#### **State Securities Commissions**

Alabama Securities Commission  
770 Washington Street, Suite 570  
Montgomery, AL 36130-4700  
(334) 242-2984

State of Alaska  
Division of Banking, Securities, and  
Corporations  
P.O. Box 110807  
Juneau, AK 99811-0807  
(907) 465-2521

## State Securities Commissions (continued)

Arizona Corporation Commission  
Securities Division  
1300 West Washington Street, 3rd Floor  
Phoenix, AZ 85007-2996  
(602) 542-4242

Arkansas Securities Division  
Heritage West Building, Suite 300  
201 E. Markham Building  
Little Rock, AR 72201  
(501) 324-9260

California Department of Corporations  
3700 Wilshire Boulevard, Suite 600  
Los Angeles, CA 90010  
(213) 736-2741

Colorado Division of Securities  
1580 Lincoln Street, Suite 420  
Denver, CO 80203  
(303) 894-2320

Connecticut Department of Banking  
Division of Securities  
260 Constitution Plaza  
Hartford, CT 06103  
(860) 240-8230

Delaware Department of Justice  
Division of Securities  
820 North French Street, 5th Floor  
Wilmington, DE 19801  
(302) 577-8424

District of Columbia  
Insurance and Securities Division  
441 4th Street, NW  
Suite 870, North  
Washington, DC 20001  
(202) 727-8000

Florida Office of Comptroller  
Department of Banking and Finance  
101 East Gaines Street  
Tallahassee, FL 32399-0350  
(904) 488-9805

State of Georgia  
Securities and Business Regulation  
Two Martin Luther King Jr. Drive  
Suite 802, West Tower  
Atlanta, GA 30334  
(404) 656-2894

Hawaii Department of Commerce  
and Consumer Affairs  
Securities Division  
1010 Richards Street  
Honolulu, HI 96813  
(808) 586-2744

Idaho Department of Finance  
Securities Bureau  
P.O. Box 83720  
Boise, ID 83720-0031  
(208) 332-8000

State of Illinois  
Office of the Secretary of State  
Securities Department  
520 South Second Street 3-200  
Springfield, IL 62701  
(217) 782-2256

Indiana Secretary of State  
Securities Division  
302 West Washington Street, Room E-111  
Indianapolis, IN 46204  
(317) 232-6681

## State Securities Commissions (continued)

**Iowa Securities Bureau**  
 Lucas State Office Building, 2nd Floor  
 Des Moines, IA 50319  
 (515) 281-4441

**State of Kansas**  
 Office of the Securities Commissioner  
 618 South Kansas Avenue, 2nd Floor  
 Topeka, KS 66603-3804  
 (913) 296-3307

**Kentucky Department of Financial Institutions**  
 477 Versailles Road  
 Frankfort, KY 40601  
 (502) 573-3390

**Louisiana Office of Financial Institutions  
 Securities Division**  
 8660 United Plaza Boulevard  
 2nd Floor  
 Baton Rouge, LA 70809  
 (504) 925-4512

**Maine Department of Professional and  
 Financial Regulation**  
 Bureau of Banking  
 Securities Division  
 State House Station 121  
 Augusta, ME 04333  
 (207) 624-8551

**State of Maryland**  
 Office of the Attorney General  
 Division of Securities  
 200 St. Paul Place, 20th Floor  
 Baltimore, MD 21202-2020  
 (410) 576-6360

**Massachusetts Securities Division**  
 Secretary of the Commonwealth  
 John W. McCormack Building  
 One Ashburton Place, Room 1701  
 Boston, MA 02108  
 (617) 727-3548

**Michigan Corporation and Securities Bureau**  
 Department of Commerce  
 6546 Mercantile Way  
 Lansing, MI 48911  
 (517) 334-6213

**Minnesota Department of Commerce  
 Securities Division**  
 133 East 7th Street  
 St. Paul, MN 55101  
 (612) 296-4026

**State of Mississippi**  
 Office of the Secretary of State  
 Regulation Unit  
 P.O. Box 136  
 Jackson, MS 39205  
 (601) 359-6371

**Missouri Secretary of State  
 Securities Division**  
 600 West Main Street  
 Jefferson City, MO 65101  
 (573) 751-4136

**State of Montana**  
 Office of the State Auditor  
 Securities Department  
 P.O. Box 4009  
 Helena, MT 59604  
 (406) 444-2040



## State Securities Commissions (continued)

Nebraska Department of Banking and Finance  
Bureau of Securities  
1200 N Street, Suite 311  
Lincoln, NE 68508  
(402) 471-3445

Nevada Securities Division  
555 East Washington Avenue  
Suite 5200  
Las Vegas, NV 89101  
(702) 486-2440

New Hampshire Bureau of Securities  
Regulation  
Department of State  
State House, Room 204  
Concord, NH 03301-4989  
(603) 271-1463

New Jersey Bureau of Securities  
Department of Law and Public Safety  
153 Halsey Street  
Newark, NJ 07101  
(973) 504-3600

New Mexico Securities Division  
Regulation and Licensing Department  
725 St. Michaels Drive  
Santa Fe, NM 87505-7605  
(505) 827-7140

New York State Department of Law  
Investor Protection and Securities  
120 Broadway, 23rd Floor  
New York, NY 10271  
(212) 416-8200

State of North Carolina  
Office of the Secretary of State  
Securities Division  
300 North Salisbury Street, Suite 100  
Raleigh, NC 27603-5909  
(919) 733-3924

State of North Dakota  
Office of the Securities Commissioner  
State Capitol Building, 5th Floor  
600 East Boulevard  
Bismarck, ND 58505-0510  
(701) 328-2910

Ohio Division of Securities  
77 South High Street  
22nd Floor  
Columbus, OH 43215  
(614) 644-7381

Oklahoma Department of Securities  
120 North Robinson, Suite 860  
First National Center  
Oklahoma City, OK 73102  
(405) 280-7700

Oregon Division of Finance  
and Corporate Securities  
350 Winter Street, NE  
Room 21  
Salem, OR 97310  
(503) 378-4387 or 4140

Pennsylvania Securities Commission  
Eastgate Office Building  
1010 North Seventh Street, 2nd Floor  
Harrisburg, PA 17102-1410  
(717) 787-8061

## State Securities Commissions (continued)

Commonwealth of Puerto Rico  
Office of the Commissioner  
of Financial Institutions  
Centro Europa Building  
1492 Ponce de Leon Avenue, Suite 600  
San Juan, PR 00909-1492  
(787) 723-3131

Rhode Island Securities Division  
Department of Business Regulation  
233 Richmond Street  
Suite 232  
Providence, RI 02903-4232  
(401) 277-3048

South Carolina Attorney General's Office  
Securities Division  
1000 Assembly Street  
Columbia, SC 29201  
(803) 734-9916

South Dakota Division of Securities  
118 West Capitol Avenue  
Pierre, SD 57501-2017  
(605) 773-4823

Tennessee Department of Commerce  
and Insurance  
Securities Division  
500 James Robertson Parkway, Suite 680  
David Crockett Tower  
Nashville, TN 37243-0485  
(615) 741-2947

State of Texas  
State Securities Board  
200 East 10th Street, 5th Floor  
Austin, TX 78701  
(512) 305-8300

Utah Department of Business Regulation  
Securities Division  
160 East, 3rd South  
Salt Lake City, UT 84111  
(801) 530-6600

Vermont Department of Banking,  
Insurance, and Securities  
89 Main Street, Drawer 20  
Montpelier, VT 05620-3101  
(802) 828-3420

State of Virginia Corporation Commission  
Division of Securities and Retail Franchising  
1300 East Main Street, 9th Floor  
Richmond, VA 23219  
(804) 371-9051

Washington Department of Financial  
Institutions, Securities Division  
210 11th Avenue, SW 3rd Floor, Room 300  
Olympia, WA 98504  
(360) 902-8760

State of West Virginia  
Securities Division  
State Capitol Building  
1900 Kanawha Boulevard East  
Building 1, Room W-110  
Charleston, WV 25305-0230  
(304) 558-2257

State of Wisconsin  
Division of Securities  
345 West Washington Avenue, 4th Floor  
Madison, WI 53703  
(608) 266-3431

State of Wyoming  
Securities Division  
State Capitol Building, Room 109  
Cheyenne, WY 82002-0020  
(307) 777-7370

## Appendix C

### Sources of Information on Investment Banking Firms

1. Investment banking firm brochures and client/transaction list.
2. Interviews and meetings with investment banking firm professionals and visits to the firm's headquarters.
3. Telephone calls to peers at other companies in your industry.
4. Telephone calls to companies on client/transaction list.
5. Inquiries of commercial bankers involved in corporate financing.
6. Inquiries of attorneys with a securities practice.
7. Inquiries of accounting firms experienced in underwritings.
8. Inquiries of venture capital firms.
9. League tables, rankings, and special issues with directories of services in such financial trade publications as *Institutional Investor*, *Euromoney*, and *Corporate Finance*.
10. Market Research from Greenwich Associates – (203) 629-1200.
11. Directories of investment banking firms and corporate services, such as Standard & Poor's *Security Dealers of North America* (listed by geographic location) and the Securities Industry Association's *Securities Industry Yearbook* (listed alphabetically).
12. Telephone call to the NASD Regulation's Public Disclosure Program – (800) 289-9999 – to see if an investment banker or any of its professionals have a disciplinary history involving underwritings of public offerings of securities.

## Appendix D

### Due Diligence Examination Outline

The goal of due diligence is to understand fully the business of the issuer, to identify the risks and problems it will face, and to assure that the registration statement is complete and accurate. Thoughtful analysis concerning the particular issuer as well as the experience, knowledge and care of the underwriters and their counsel in this process represent the critical ingredients of due diligence. A checklist of topics and procedures merely serve as an aid in the due diligence process when used in conjunction with thoughtful analysis and the review of applicable registration forms, rules and guides promulgated by the SEC.

The SEC and NASD Regulation both have acknowledged that attempts to define or standardize the elements of the underwriters' due diligence obligations have not been successful. The appropriate due diligence process will depend on the nature of the issuer, the level of the risk involved in the offering, and the investment banker's knowledge of and relationship with the issuer.

Checklists of the items to be covered in a due diligence investigation can be useful tools. It is not possible, however, to develop a checklist that will cover all issues or all offerings. Due diligence is not a mechanical process. The use or absence of use of a checklist does not indicate the quality of due diligence. Conversely, deviation from any checklist that is used does not taint a due diligence review any more than the following of a checklist validates such a review.

In view of the above, the following outline should not be considered a definitive statement of, or a standard recommended by, NASD Regulation regarding the due diligence issues and procedures that would be required or appropriate in any particular initial public offering.

- I. Before Commitment Is Made to Establish Investment Banking Relationship With Prospective Investment Banking Client (the "Company")
  - A. Staffing the Review
    1. Assign personnel who have particular competence in the business in which the issuer is engaged.
    2. Consider retaining outside consultants to analyze the technology employed by the Company and others in the Company's industry.
  - B. Assessing Integrity of Management
    1. Inquire of appropriate parties whether the corporation is being run by the type of persons with whom the investment banker would wish to be associated.
    2. Determine whether any of the Company's officers, directors, or principal shareholders have been charged or convicted of any charges involving fraud, embezzlement, insider trading, or any other matter concerning dishonesty.
  - C. Review of Industry
    1. Examine prospectuses, Form 10-Ks, and annual reports prepared by other corporations in the industry.

2. Examine research reports on major corporations in the industry as well as reports on the industry itself.
  3. Become familiar with applicable regulations governing the industry.
  4. Study the accounting practices followed in the industry, including any differences in accounting practices followed by different companies.
  5. Determine financial ratios of the industry as a whole.
  6. Become acquainted with new developments in the industry by examining trade publications.
  7. Determine the industry size and growth rate.
  8. Assess whether the industry is subject to cyclical influences.
  9. Determine whether seasonality of demand affects the industry.
  10. Determine the stage of the industry in the industry life cycle (e.g., growth, maturity).
  11. Evaluate short-term and long-term prospects for the industry.
- II. After Commitment is Made to Establish Investment Banking Relationship
- A. Submission of Questionnaire to Officers and Directors
- The specific information to be sought includes:
1. Relationship to underwriters.
  2. Voting arrangements.
  3. Transactions with the companies.
  4. Past and present occupations.
  5. Record and beneficial ownership of the stock.
  6. Compensation, direct and indirect.
  7. Principal shareholders.
  8. Knowledge of pending or threatened litigation.
- B. Submission of Request for Company Documents
1. Regarding legal status.
    - a. Charter documents (articles of incorporation and bylaws) and all amendments.
    - b. Minute books for meetings of directors, shareholders, executive committee, stock option committee and the like for the past five years.
    - c. Copies of applications for permits to issue stock permits, and exemption notices.
    - d. Specimen stock certificates.
    - e. Copies of voting trust and voting agreements.
    - f. Documents previously filed with the SEC, including prospectuses, Form 10, 10-K, 9-K, 8-K, proxy statements, and supplementary sales literature.
    - g. Contracts or arrangements restricting the transferability of shares.
    - h. Shareholders' list indicating names, ownership, and how shares are held.
    - i. Licenses to conduct business.
    - j. Foreign qualifications, if any.
    - k. All documents filed with any state agency affecting corporate status including annual reports.
  2. Regarding the Company's business.
    - a. Promissory notes (except immaterial routine noted from persons, other than officers, directors, or 10 percent shareholders), loan agreements, trust deeds, indentures and all relevant correspondence regarding same.
    - b. Financial statements and tax returns for the past five years.
    - c. Stock option agreements, profit sharing and pension plans, supplementary information booklets.

- d. Annual reports.
  - e. Advertising materials, brochures, and other sales literature.
  - f. Leases and/or grant deeds.
  - g. Description of plants and properties.
  - h. Agreements with officers, directors, shareholders, or promoters (e.g., employment agreements, indemnification agreements).
  - i. Documents of agreements with affiliates (e.g., lease, purchase agreement, license, covenant not to compete, etc.), insiders and other related parties, and if affiliate is other than a natural person (e.g., trust, estate, partnership, joint venture, corporation) court orders, agreements, stock book, and other documents necessary to establish precise nature of affiliation and terms thereof.
  - j. All materials contracts.
  - k. Copies of licenses, permits, governmental approvals, quality ratings, franchises, patents, copyrights, trade secret agreements.
  - l. Distribution or agency agreements.
  - m. Consignment agreements.
  - n. List of major customers and suppliers, copies of their existing agreements, and copies of correspondence for the past year.
  - o. All documents relating to investigations, claims, hearings, litigation, adjudications, or proceedings by or against the Company, including copies of the material pleading.
  - p. All documents relating to issuance of stock, including documents relating to reliance on securities registration exemptions and transfer ledger.
  - q. Business plans (past five years).
  - r. All written documents relating to employment policies and practices.
  - s. All correspondence between the Company and legal counsel regarding responses to requests for auditors information (for five years).
  - t. Copies of any pleading or other documents relating to any litigation, action, or proceeding related to any of the Company's affiliates, officers, directors, or beneficial owners of 10 percent or more of stock involving disqualification under Rule 505 of Regulation D.
  - u. All insurance documents.
  - v. Affirmative action plans.
  - w. Any other documents that are material to the Company.
- C. Review of Basic Corporate Documents
1. After gaining an understanding of the industry, examine specific Company documents filed with the SEC during the past five years, including:
    - a. Form 10-K.
    - b. Form 8-K.
    - c. Form 10-Q.
    - d. Registration statements relating to the sale of other securities.
    - e. Proxy statements for:
      - 1) Annual meetings,
      - 2) Acquisitions, and
      - 3) Other transactions requiring a shareholder vote.
  2. Examine document and other communications sent to the shareholders during the past five years, including:

- a. Annual reports and quarterly reports, with particular attention to the president's letter, which may provide insight into any major problems faced by the corporation.
- b. Follow-up reports on annual meetings.
- c. Shareholder letters.
- 3. Examine public documents on the Company.
  - a. News clippings.
  - b. Press releases.
  - c. Documents on file.
  - d. NEXIS computer searches.
  - e. Recent private placement memoranda and written rating agency presentation.
- 4. Evaluate restrictive covenants.
  - a. Examine indentures and loan agreements.
  - b. Consider the effect such covenants might have on the Company's operations and prospective financing.
- D. Analysis of the Company and its Industry
  - 1. Company analysis.
    - a. Compare the Company's prior business plan and financial plan with the actual results obtained.
    - b. Determine the Company's principal product lines. If the Company's principal products are newly developed, it may be desirable to retain an independent consultant who can advise on the technology, the feasibility of the product, and its potential market.
    - c. Examine the demographic and geographic markets in which the company sells its products.
    - d. Compile a list of principal customers by products.
    - e. Obtain samples of marketing and sales literature used for various products.
    - f. Assess the technology position of the company.
    - g. Compile a list of trademarks, trade names, and service marks.
    - h. Obtain copies of permits for conduct of business, including licenses, franchises, concessions, and distributorship agreements.
  - 2. Strategic analysis.
    - a. What are the Company's long-term goals?
    - b. On what basis does the Company measure its performance?
    - c. What strengths does the Company intend to exploit to be successful in its industry?
    - d. What weaknesses does the Company have in the industry and what does it intend to do to overcome such weaknesses?
    - e. What are the current market opportunities and how does the Company plan to exploit such opportunities?
    - f. What are the risks that the Company faces in the industry? What is the likelihood that such risks will come to fruition? What would be the consequence to the Company if the risks came to fruition?
    - g. What are the Company's business strategies for success in the industry?
  - 3. Financial analysis.
    - a. Compare basic financial ratios of the Company to the industry average.
      - (1) Debt to equity ratios.
      - (2) Liquidity ratios.
        - (a) Current ratio (Current

- assets/current liabilities).
- (b) Quick ratio (Current assets minus inventory/current liabilities).
- (c) Earnings/fixed charges.
- (d) Price/earnings ratios.
- (3) Asset utilization ratios.
  - (a) Sales turnover.
  - (b) Total assets turnover.
- (4) Profitability ratios.
  - (a) Return on assets.
  - (b) Return on equity.
- (5) Price-earnings ratios.
- 4. Prepare a written memorandum setting forth questions to be asked of management and areas to be explored in greater depth.
- E. Visits to Principal Facilities
  - 1. If the Company is a manufacturing concern, visit one or more of its principal plants. Inspect the facilities to become acquainted with the Company's products and the manner in which they are produced.
  - 2. If the Company is not a manufacturing concern, visit one or more of the Company's offices to obtain an overview of the Company's day-to-day operations.
  - 3. Does it appear the facilities are being fully utilized?
- F. Meetings With Principal Officers (after reviewing the registration statement but before engaging in a line-by-line discussion of the document)
  - 1. Hold individual meetings with executive officers responsible for significant aspects of the Company's business.
    - a. Prepare a list of questions in advance to focus the discussions.
      - (1) How would you assess the flexibility of the production facilities?
      - (2) Do you anticipate advances in production techniques and, if so, is the Company prepared to make such advances?
      - (3) Does the Company have any continuing obligations in connection with sales, such as an ongoing maintenance and repair obligation or a requirement to finance purchases by customers?
      - (4) How do you assess the quality and quantity of resources allocated by the Company to research and development?
      - (5) What are your financial projections?
      - (6) Have results met past projections?
      - (7) How do you assess the gross profit margin trends in your various product lines?
      - (8) How do you feel about the level of sales for each of the Company's product lines?
      - (9) How do you assess labor relations? Have there been any work stoppages and, if so, how have you dealt with them?
      - (10) What is the Company's overall advertising and marketing plan?
      - (11) What is the Company's acquisition policy? Explain the Company's recent acquisitions, if any.
      - (12) For what does the Company plan to use the proceeds of the public offering?
      - (13) How would you assess the inventory turnover?
      - (14) Have there been any delays in new product introduction?



- (15) Has the Company changed accounting or legal representation within the last five years? If so, why?
- (16) Has the Company lost any major customer or supplier within the last five years? If so, why?
- (17) Are any of the existing shareholders antagonistic toward the current management of the Company? If so, please explain.
- b. During the course of the interviews, ask the same questions of different corporate officials to evaluate the answers received and to obtain different perspectives on potential problems.
- 2. Hold at least one meeting with the Company's chief executive officer (CEO).
  - a. Ask the CEO to review the broad aspects of the Company's strategic and operational goals and its plan to achieve those goals.
  - b. Ask the CEO for his or her personal assessment of the Company's strengths and weaknesses.
    - (1) This interview should be as far reaching as circumstances warrant.
    - (2) It is essential to listen critically to the CEO's comments.
- 3. Based on the meetings, assess the competence of the officers of the Company.
  - a. Are the administrators organized and knowledgeable?
  - b. Are the financial officers skilled?
  - c. Are the technical personnel well-qualified?
  - d. Is the management structure such that it can adjust to the Company's growth beyond the current stages of operation?
- G. Meetings With Company's Accountants (Out of the Presence of the Company's Officials)
 

Questions to Ask:

  - 1. How would you assess the Company's internal controls?
  - 2. Are there any unusual accounting issues in regard to the Company or the industry?
  - 3. Are reserves adequate?
  - 4. How would you assess the Company's aged-analysis of accounts receivable?
  - 5. Do you note any unusual fluctuations in inventory?
  - 6. Is the Company's method of revenue recognition in line with industry practice and applicable accounting principles?
  - 7. How do you assess the Company's segment reporting?
  - 8. From your dealings with the Company's accounting and financial personnel, how would you assess their capability?
- H. Meeting With Company's Counsel
 

Questions to Ask:

  - 1. How would you assess the pending litigation and contingent liabilities of the Company?
  - 2. How would you assess the pending administration and regulatory proceedings that the Company is facing?

3. How would you assess the status of the Company's proprietary information, including any copyrights, trademarks, and trade secrets?
- I. Meetings With Other Third Parties
1. Suppliers/creditors. Does the Company pay its bills/debts in a timely manner?
  2. Competitors and customers.
    - a. What is the company's reputation?
    - b. How would you rate management's reputation?
    - c. What risks are present in the Company and its industry?
    - d. How would you rate the quality of the Company's products and services?
- J. Legal Review
1. Review of basic corporate documents.
    - a. Articles of incorporation.
      - (1) Obtain copies of the articles of incorporation, including any restated articles and amendments.
      - (2) Determine whether all of these items were certified by the Secretary of State (by whatever name known) of the state in which the company is incorporated.
      - (3) Determine whether the purposes clause of the articles is broad enough under the applicable law to include all actions previously taken and presently being contemplated.
      - (4) List the dates of all amendments and summarize changes.
      - (5) Were such amendments validly authorized by the shareholders?
    - b. Bylaws.
      - (1) Obtain copies of the bylaws, including all amendments certified by the corporate secretary.
      - (2) Review for powers of officers, roles of committees, powers to amend, restrictions on actions, and other governing provisions.
    - c. Minutes.
      - (1) Obtain minutes of all meetings of directors, committees of directors and shareholders, including copies of any written notices, waivers of notices, and written consents to action without a meeting, all for the past five years.
  - (6) Is the name as specified in the Charter the same as used by the Company?
  - (7) Do the powers of the Company suggest any restrictions?
  - (8) Is the authorized capital sufficient?
  - (9) Verify the description of the Company's equity stock.
  - (10) Do the articles provide for preemptive rights?
  - (11) Does the authorized number of directors conform to the minutes?
  - (12) Do the articles provide for the accessibility of shares?
  - (13) Do the articles provide for restrictions on issuance of shares?
  - (14) What is the county of the principal place of business?
  - (15) Do the articles provide for indemnification of officers and directors?

- (2) Has the Company regularly held its annual meeting of shareholders? If not, explain the circumstances. If not, were notices duly given or waivers obtained? If notices or waivers were properly obtained, indicate whether such waivers were actually signed before or during the meetings, or whether they were executed after the meetings.
- (3) Indicate whether the Company holds regular periodic meetings of its directors.
- (4) What is the normal frequency of such meetings?
- (5) Were notices duly given or waivers obtained with respect to these meetings? If so, indicate whether such waivers were actually signed before or during the meetings, or whether they were executed after the meetings.
- (6) If a meeting was not held, were resolutions adopted pursuant to proper unanimous written consent?
- (7) Prepare a summary of the minutes for review by the underwriters.
- d. Meetings.
  - (1) Indicate the date and place for meetings, both for directors and shareholders, as provided in the bylaws or articles of the corporation.
  - (2) What were the actual locations of the last three shareholders' meetings?
  - (3) What were the actual locations of the last two directors' meetings?
- e. Executive committee meetings.
  - (1) If the Company has an executive committee, does it hold regular periodic meetings?
  - (2) If so, are minutes regularly prepared?
  - (3) If such minutes are prepared, is such preparation under the direction or approval of the office of general counsel?
  - (4) If no meetings are held, are resolutions properly adopted pursuant to unanimous written consent?
- f. Directors' and shareholders' meetings/minutes.
  - (1) How are the corporate minutes and/or unanimous written consents kept? If the minutes or consents are kept looseleaf, are the pages consecutively numbered?
  - (2) Are previous minutes of meetings properly signed? Who signs the minutes?
  - (3) Do all previous minutes reflect the presence of a quorum and the names of those in attendance?
  - (4) Do all previous minutes indicate the approval of previous minutes?
  - (5) Do all previous minutes indicate the time and place of the holding of the meeting?
  - (6) Do all previous minutes indicate that either waivers were properly executed or notices properly given for the meeting?
- g. Voting trust agreements.
  - (1) Obtain copies of any voting trust agreements, or shareholders' or similar agreement, and lists of the shares covered.

- (2) Do such agreements terminate by virtue of the offering?
- h. Minute books and stock records.
  - (1) Where are the minute books of the Company physically kept?
  - (2) Where are the stock record books of the Company physically kept?
  - (3) Who is the stock transfer agent for the Company? (Indicate the transfer agent's complete address.)
- i. Annual reports.
  - (1) Obtain copies of any document sent to shareholders, including the Company's annual reports, quarterly reports, following reports on annual meetings and shareholder letters and press releases sent within the last three years.
- j. Proxy statements.
  - (1) Obtain copies of any proxy statements of the Company for annual meetings, acquisitions or other transactions requiring a shareholder vote within the last five years.
  - (2) Obtain copies of the form of proxy used for the last annual meetings.
- k. Annual certified audits.
  - (1) Obtain copies of the annual certified audits of the Company for the last three years, if any, unless contained in the annual report.
  - (2) Has there been any change in the accountants?
- l. Election procedures.
  - (1) Do election procedures for directors, as used by the Company, comply with all applicable laws and regulations, including the Company's bylaws?
- (2) Have directors been unanimously elected?
- m. Concurrent director/officer status.
  - (1) Was any person who was both a director and an officer present at the meeting at which his or her salary was set?
  - (2) Was such person counted as part of the quorum for such a meeting or did that person sign a unanimous written consent for same?
  - (3) If an affirmative answer is given to either (1) or (2), does such action create a legal problem under the applicable law?
- n. Power of board of directors.
 

Is it the Company's policy to get the board of directors' approval for:

  - (1) Changes in reserves?
  - (2) Changes in surplus accounts?
  - (3) Declaration of dividends?
  - (4) Election of officers?
  - (5) The setting of officers' salaries and/or bonuses?
  - (6) Amendments to the by-laws of the corporations?
  - (7) The granting of powers of attorney?
- o. Policy-making authority of the board of directors.
  - (1) As a practical matter, does the Company get the board of directors' approval for all major policy decisions?
  - (2) If not, how much leeway does the board of directors give the Company's management in the area?
- p. Indemnification.
  - (1) Obtain copies of any insurance policies or other agreements, other than the bylaws of the articles of incorporation, which provide for the indemnification

- of any officer, director, shareholder, employee, or other agent of the company.
- (2) Is the indemnification agreement or policy authorized by applicable jurisdiction?
- (3) Is any indemnification in the bylaws consonant with law in the applicable jurisdiction?
- q. Rights of the various classes of stock.
- (1) State the voting rights of the various classes of stocks.
- (2) Are any dividends on preferred stock presently in arrears? If so, indicate any additional preferences that come into being because of the arrearage.
- (3) Indicate any potential voting right, other than noted in Section II.J.1.b. above, held by holders of preferred, convertibles, debentures, bonds, etc., that become effective on the happening of contingent events (such as failure to pay dividends or make payments).
- r. Dividends and other distributions
- (1) Indicate the Company's dividend record on common stock for the past five years.
- (2) Indicate any other distribution of property to shareholders by the Company over the past five years.
- (3) Has the Company ever paid a dividend or made another distribution to shareholders without meeting an earned surplus or other test under applicable state law to cover it? If so, explain.
- s. Pension plans/profit sharing plans/stock option plans.
- (1) Obtain copies of (i) all pension plans, (ii) all profit sharing plans, and (iii) all stock option plans.
- (2) If the Company has a pension plan, indicate the date on which there last was a compliance with the Federal Pension Plan Disclosure Act. (Compliance is obtained by giving a printed copy of the plan to the employees covered thereby.)
- t. Reports filed with governmental agencies.
- (1) Review all material reports filed with any governmental agency (state or federal) during the last 12 months.
- (2) Indicate whether the narrative in all reports filed with any governmental agency, as well as the Company's annual report, is checked for accuracy by the office of general counsel.
- u. Related parties.
- (1) Does the Company do business with which any officer or director, including spouses and other close relatives, has an interest?
- v. Insurance.
- (1) Is the Company self-insured?
- (2) If so, to what extent?
- (3) Indicate the insurance coverage of the Company, giving the name of the carrier and the policy numbers of each type of coverage.
- w. License to do business.
- (1) Indicate the states in which the Company does business.
- (2) Obtain copies of certificate of

- good standing to determine if the Company is properly licensed in each state it is doing business.
- (3) Is the Company licensed to do business in any states in which it presently is not doing business? If so, indicate the tax consequences for each jurisdiction.
- x. Corporate opportunity doctrine compliance.
- (1) Indicate any possible violation of the corporate opportunity doctrine known to the Company's counsel.
- y. Contingent liabilities.
- (1) List all material contingent liabilities of the Company not otherwise set forth in this audit.
2. Documents regarding securities.
- a. Stock options/stock purchases/stock bonuses.
- (1) Obtain all forms of stock option plans, stock purchase plans, and stock bonus plans, and all forms of stock option agreements, or escrow agreements that have been or may be used under any such plan, as well as all other documents relating to the issuance of securities by the Company, including other purchase agreements, registration rights agreements, and offering circulars.
- b. Sources of capital.
- (1) List each issue of stock, bonds, debentures, options, warrants, other convertibles, etc., indicating the amount, the authorized amount, and the applicable permit or registration of each (both state and federal), and if there is no permit and/or registration, state the claimed exemption.
- (2) List the states where such securities described in Section J.2.a., above, were issued and state the date of blue-sky authorization. If no such authorization, give the applicable exemption.
- (3) Indicate the date of each federal registration, if any, and the term for which registered.
- (4) Obtain copies of any agreements pursuant to which such securities were issued (e.g., stock option plans, placement agreements, bond indentures, etc.).
- (5) Do any such agreements provide for registration rights? If so, describe.
- (6) Obtain copies of all applications for permit, permits, and registration statements.
- c. Payments for stock.
- (1) Do the Company's records indicate all of its outstanding stock was properly issued for value?
- (2) Is any of the Company's stock not fully paid? If so, explain; do statutes, articles and by-laws permit?
- d. Stock issuance/transfer restrictions.
- (1) Do all issuance and transfers comply with any rights of first refusal, preemptive rights, or other restrictions contained in the articles, bylaws or other documents, such as placement agreements?
3. Review of material contracts.
- a. Various material contracts

- (1) Obtain bank lines of credit agreements, including any amendments, renewal letters, notices, default waivers, etc.
  - (2) Obtain other outstanding loan agreements, guarantees, indentures, or agreements with respect to indebtedness.
  - (3) Obtain all outstanding material leases for real and personal property.
  - (4) Obtain material contracts with suppliers and customers.
  - (5) Obtain any model sales contracts, license agreements, and dealer agreements used by the Company.
  - (6) Obtain agreements for loans and any other agreements (including consulting and employment contracts) for officers, directors, or employees, whether or not now outstanding.
  - (7) Obtain schedule for all insurance policies in force covering property of the Company and any other insurance policies, such as "key man" policies or products liability policies.
  - (8) Obtain partnership or joint venture agreements.
  - (9) Obtain copies of any bonus plans, retirement plans, pension plans, deferred compensation plans, profit sharing and management incentive agreements.
- b. Mortgages, notes payable, and other liabilities.
- (1) List all mortgages (including deeds of trust) of the Company on which the anticipation is that final payment will not be made within the 36 months of the date of this examination.
  - (2) Indicate whether such mortgages overlap any other security interest given by the Company.
  - (3) List all notes and other liabilities in excess of \$5,000.
- c. Reports on dividends.
- (1) Does the Company make reports (both federal and/or state) on dividends paid to its shareholders?
  - (2) If so, give the date of the last such report.
- d. Corporate negotiable insurance.
- (1) Indicate each institution in which the Company has authorized its agents to execute negotiable instruments, showing the authorized agents, their titles, and the limit of their authority.
  - (2) For each of the authorizations, indicate the date of the corporate resolution authorizing the signature.
- e. Authority of corporate agent.
- (1) Is a notice of limit of agent's authority given to each new account with which the Company does business?
  - (2) If not, what steps are taken to ensure that each agent of the Company does not exceed his/her authority?
- f. Business outside the United States.
- (1) If the Company does any business outside the United States, determine whether or not any activities of the Company might reasonably be

construed as a violation of any statutory or regulating limitation on doing business with specified nations or limitation on certain trading, such as trading in gold and foreign exchange.

- (2) What steps have been taken to ensure that the Company does not violate any prohibitions concerning transactions between designated foreign companies or concerning transfer with respect to securities registered in the name of designated nationals, as well as importation of and dealing on certain classes of merchandise?

- (3) List all corporations incorporated in a foreign country in which the Company owns 10 percent or more of the capital stock, and for each such corporation indicate (i) any outstanding powers of attorney (ii) any guarantees undertaken (iii) any liabilities created, and (iv) any contract commitments undertaken.

g. Prepaid items.

- (1) List all prepaid items on the Company's book of assets when such prepayments exceed \$100,000 and will continue in excess of this amount for more than 12 months.

h. Bad debts.

- (1) Indicate the percentage of accounts receivable that became bad debts in each of the last three years.
- (2) Ascertain trends regarding bad debts.

i. Security interests.

- (1) What security interest, if any, is typically used to secure open accounts?
- (2) Are such security devices properly perfected?
- (3) In how many states does the Company presently have perfected security interest?
- (4) What steps are taken to ensure the timely filing of continuation statements required under Article 9 of the Uniform Commercial Code?

j. Warehousing.

- (1) Does the Company, as either buyer or seller, utilize the facilities of on-premises warehousing for financing purposes?
- (2) Does the Company, as either buyer or seller, utilize warehouse receipts in financing?

k. Labor contracts.

- (1) List all labor contracts to which the Company is a signer, indicating the bargaining unit covered, the union, the termination date, and a general statement of the company's relationship with the union, indicating specifically any major problem areas.
- (2) If there are material problems, obtain copies of each labor contract.

l. Individual employment contracts.

- (1) Does the Company have any individual employees with a written employment contract?
- (2) If so, obtain copies of all forms used for employment contracts (including forms of contracts used for executives).



## m. Minimum wage compliance.

(1) Is the Company considered to be engaged in interstate commerce?

(2) Are any employees or employees of subcontractors working on the premises currently being paid less than the applicable minimum wage per hour? If so, what justification can be given for a lower rate of pay?

(3) Are any employees covered by a state minimum wage law requiring the payment of more than the federal minimum wage per hour? If so, indicate with appropriate citation the state law, the bargaining units covered, and any other pertinent information.

(4) Is overtime paid? If not, explain when it is not paid.

## n. Child labor.

(1) Does the Company employ any person under eighteen years of age on a permanent basis?

(2) What safeguards are taken to ensure that the Company does not violate either the federal or state "Child Labor Act"?

## o. Compliance with fair labor standards.

(1) Has any governmental agency checked the Company within the last three years in regard to compliance with the fair labor standard act or other litigation regarding employees?

(2) If so, indicate the approximate date and result of the investigation.

## p. Compliance with antidiscrimination statutes.

(1) Does the Company have procedures to assure compliance with antidiscrimination statutes relating to age, sex, and race; and does it keep adequate records to demonstrate compliance (e.g., application forms, records of employees, and work assignments, etc.)?

(2) Does the company, in fact, have an age limit cutoff beyond which general hiring is not done? If so, what is the age limit?

(3) What steps have been taken to ensure the compliance by the Company with federal statutes prohibiting age discrimination in hiring?

## q. Salary withholding information.

(1) Does the Company maintain an up-to-date file of Form W-4 (withholding information) for each employee?

(2) Has the Company failed to comply with withholding requirements?

## r. Worker's compensation.

(1) Does the Company maintain the worker compensation insurance required by the state on each employee?

(2) If not, explain.

## s. Material payments on contracts.

(1) List all contracts, presently in force, on which the Company, directly or indirectly, is bound, that will not be completed within 24 months, and each that involves payments (or performance of services or delivery of goods) to or by the Company of a material account.

- (2) Make a schedule of all leases for real and personal property requiring payment of a material amount.
- t. Contract forms and significant provisions.
  - (1) Do the contract forms presently in use by the Company meet the requirements of the Uniform Commercial Code?
  - (2) What precautions are taken to ensure that, upon acceptance, additional terms are not inserted by the other party and made part of the agreement?
  - (3) Obtain copies of all significant contract forms utilized by the Company.
  - (4) Are any required anti-discrimination provisions included?
- u. Current breaches of material agreements.
  - (1) If any party is presently in breach of any material agreement with the Company, indicate:
    - (i) The default,
    - (ii) The contract penalty for the breach, if any,
    - (iii) What action presently is being taken and
    - (iv) What action is being contemplated.
  - (2) Does the Company take action in the event of breaches by others?
- v. Sales of the Company's products.
  - (1) Indicate how the Company's sales are made (i.e., through sales agents, distributors, independent contractors, etc.).
  - (2) Indicate the authority each type of selling agent possesses.
    - (3) If sales agents have limited authority, what steps are taken to publish this authority to those with whom the agent deals?
    - (4) If independent contractors are used, are they permitted to set prices? Are they given a sales quota? Are they truly independent contractors?
- w. Identification of agents.
  - (1) List the titles and positions of those who, under a reasonable interpretation of the statutory and case law of the jurisdiction in which they sell for the Company, could be considered agents of the Company.
  - (2) Do any such agents act through contractual relationships?
- x. Sales forms.
  - (1) Does the Company have sales forms that are considered to be offers tendered for acceptance by the purchaser, or
  - (2) Does the Company have forms that are considered offers to the Company when executed by a purchaser? If the latter is used, is acceptance accomplished at the home office or by the agent in the field?
- y. Direct sales.
  - (1) List those jurisdictions in which direct sales are made by the Company.
  - (2) List those jurisdictions in which direct sales are made through an independent contractor or distributor.
  - (3) List those jurisdictions on which direct sales are made only via communications in interstate commerce.

- z. Trade associations.
  - (1) Indicate whether the Company is a member of any trade association(s).
  - (2) List all such organizations with which the Company has any contract.
  - (3) Indicate the relationship between the Company and such organizations.
  - (4) Indicate whether any of the organizations above listed have been investigated by any state or federal group, either administrative, judicial, or legislative, for possible anti-trust violations during the last five years.
  - (5) If so, explain in detail the outcome of the investigation and what impact, if any, this had on the Company.
- aa. Material transactions with insiders and affiliates.
  - (1) Obtain material of any material transactions within the last five fiscal years with any insider (i.e., any director, officer or substantial owner of the Company's securities) or any associate of, or entity affiliated with, an insider.
- 4. Regulation and litigation.
  - a. Various items relating to regulation litigation.
    - (1) Obtain all letters sent to the Company's independent auditors in connection with its audits for the past five fiscal years, including "litigation letters."
    - (2) Obtain copies of letters from the auditors to the Company regarding its internal management controls.
    - (3) Obtain active litigation files for material litigation, including letters asserting claims, complaints, answers, etc.
    - (4) Obtain any settlement documents for material litigation.
    - (5) Obtain any decrees, orders, or judgments of courts or governmental agencies.
    - (6) Obtain information regarding any material litigation to which the Company is a party or in which it may become involved.
    - (7) Obtain audited financial statements (five years).
    - (8) Obtain recent forward-looking budgets for the next two fiscal years prepared on a monthly basis (if available).
    - (9) Obtain recent five-year projections (if available).
  - b. Pricing policies.
    - (1) Does the Company, in its pricing policies, follow an industrial leader?
    - (2) If so, which competitor does the Company follow as leader?
    - (3) If not, how are the Company's pricing policies determined?
  - c. Compliance with building codes.
    - (1) Is the Company in compliance with all building codes (or other similar local governmental codes) that are applicable to it?
    - (2) If not, explain.
    - (3) Indicate the approximate date of the last time the Company's facilities were checked by local governmental authorities for possible violations of local governmental codes, and indicate the results of such investigation.

- (4) If any of the Company's facilities are borderline, indicate any remedial steps that should be undertaken at this time.
- (5) List any warnings that the Company has received within the past three years for the violation of any local governmental codes.
- (6) List the date and amounts of fines, if any, paid to any local governmental authority for violation of local codes, other than the traffic code, paid by the Company during the last three years.
- d. Contract defaults.
  - (1) Is the Company presently in default under any contractual arrangement?
  - (2) If so, explain the default and indicate the penalties arising out of such default.
- e. Liens.
  - (1) List all liens presently in force against the Company's property, both real and personal.
  - (2) Have any actions been taken in respect to any such liens?
- f. Legal action.
  - (1) List all legal actions presently pending or known to be contemplated in which the Company might have an involvement.
  - (2) Ascertain the identity of legal counsel representing the Company in such matters.
- g. Assignment of patents, trademarks, and copyrights.
  - (1) Obtain the form used in which employees assign to the Company any patent, trademark, and/or copyright that might arise from inventions discovered while working for the Company, together with a list of the employees who have signed the contract. If a form is not used, should it be?
  - (2) Does the Company have nondisclosure agreements with employees?
- h. Surety bonds.
  - (1) Indicate those employees (by title or position) who are presently covered by a fidelity or other surety bonds.
  - (2) What are the amounts of any such bonds?
- i. Charitable contributions.
  - (1) Indicate the number and amount of charitable contributions made by the Company in each of the last two years in the following categories: (i) religious, (ii) educational, (iii) other.
  - (2) Does the Company have any policy regarding employee charitable contributions?
- j. Lobbying activities/political campaigns
  - (1) Indicate whether the Company is engaged in any lobbying activities or political campaigns and, if so, to what extent, and at what financial cost.
  - (2) Does the Company retain any lobbying firms?
- k. Tax compliance.
  - (1) Does the Company file all required tax reports.
  - (2) If not, explain.
  - (3) How long are tax records kept?
  - (4) Does the Company have its tax records reviewed periodically for compliance with tax laws?

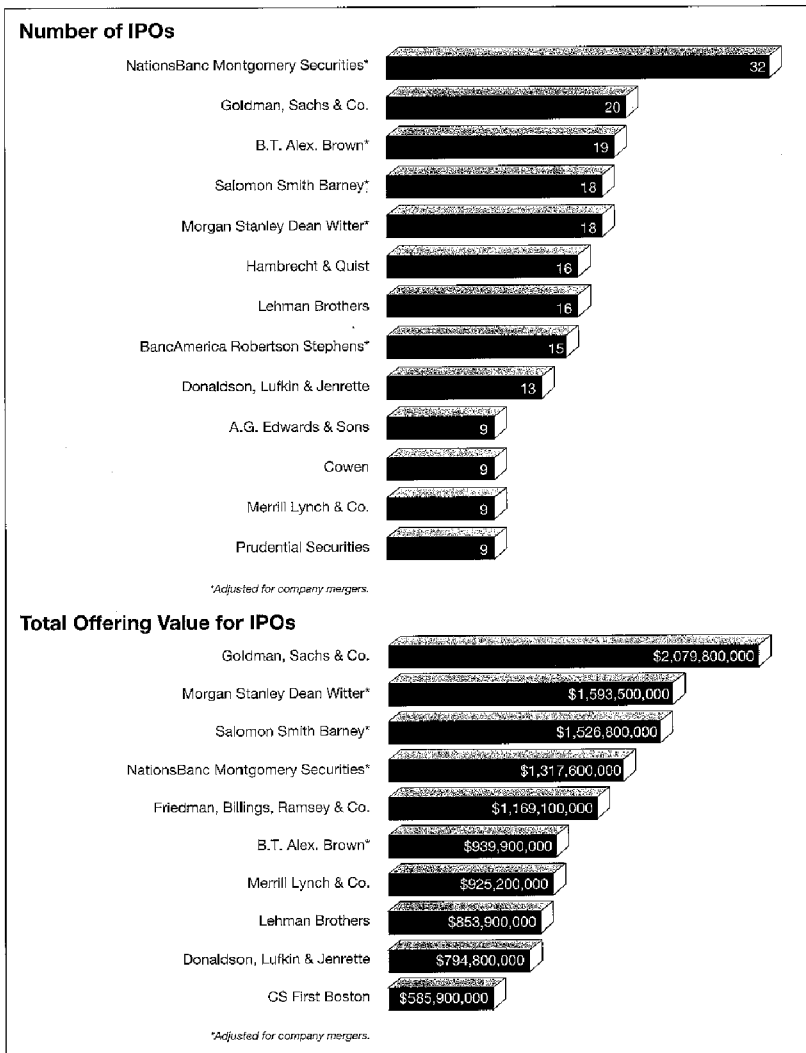
- (5) How often are the tax reports reviewed and by whom?
- (6) Does the Company utilize tax counsel in the planning phase of transactions?
- (7) If so, is tax advice rendered by house counsel or outside counsel?
- (8) How are audits by governmental tax authorities conducted?
- I. Subsidiary information.
  - (1) Identify the Company's subsidiaries.
  - (2) Where material, provide the information above with respect to each subsidiary of the Company.
- K. Review Officers' and Directors' Questionnaire
  - 1. Obtain from the Company's counsel the "officers' and directors' questionnaire" to gather information on the Company's officers and directors, their remuneration and employee benefits, and material transactions that they have had with the Company.
  - 2. Compare the information disclosed in the questionnaire with the disclosure required by the applicable registration form, especially in regard to:
    - a. Insider transactions and loans.
    - b. NASD Regulation affiliations.
    - c. Litigation.
    - d. Cheap stock.
    - e. Stock ownership.
- L. Check of Order Backlogs
  - 1. Compare oral purchase orders or oral changes to written purchase orders.
  - 2. Do cancellation provisions exist in standard purchase orders, including any penalties for cancellation?
- 3. Are there indications that outstanding offers may be "soft," or subject to cancellation?
- M. Detailed Review of Draft of Registration Statement
  - 1. Read the draft of the registration statement carefully for content.
  - 2. Read the draft of the registration statement a second time against:
    - a. The items of the applicable form (e.g., Form S-1, Form S-2, Form S-3, Form S-18) and
    - b. Regulation S-K (to the extent covered by the applicable form).
      - (1) Item 501-Forepart of Registration Statement and Outside Front Cover Page of Prospectus.
      - (2) Item 502-Inside Front and Outside Back Cover Pages of Prospectus.
      - (3) Item 503-Summary Information, Risk Factors, and Ratio of Earnings to Fixed Charges.
      - (4) Item 504-Use of Proceeds.
      - (5) Item 505-Determination of Offering Price.
      - (6) Item 506-Dilution.
      - (7) Item 507-Selling Security Holders.
      - (8) Item 508-Plan of Distribution.
      - (9) Item 509-Interests of Named Experts.
      - (10) Item 510-Disclosure of Commission Position on Indemnification for Securities Act Liabilities.
      - (11) Item 511-Other Expenses of Issuance and Distribution.
      - (12) Item 512-Undertakings.

3. Review the registration statement on a line-by-line basis with appropriate individuals, including:
    - a. Officers of the Company responsible for preparing the registration statement.
    - b. The Company's counsel.
    - c. Representative of the Company's certified public accountants.
  4. Based on the information elicited through discussions with various individuals, encourage that the registration statement be revised in an effort to improve upon its disclosure.
  5. After a revised draft of the registration statement is available, see that it is distributed to all directors and key officials.
  6. Review the Company's procedures for collecting and evaluating comments on the registration statement from those persons to whom it has been furnished.
- N. Review of Other Documents
1. Review documents not previously furnished, including those of a confidential nature that the Company would prefer not to be taken from its offices, including:
    - a. Five-year plans.
    - b. Financial forecasts.
    - c. Budgets.
    - d. Periodic reports by operating units to senior management or the board of directors.
    - e. Letters of comment received by the Company in connection with prior registration statements.
    - f. At least the most recent management letter prepared by the accountants in connection with their audit.
- O. Review During Negotiation of Underwriting Agreement
1. During negotiations on representations and warranties in the underwriting agreement, be sensitive to potential problems that arise and may need to be disclosed in the registration statement.
  2. Review legal counsel's summary of the Company's minutes.
- III. Summary Analysis
- A. Prior to effectiveness of registration statement, prepare a memorandum summarizing the due diligence investigation, including the dates of any visits to principal facilities, meetings with management, and registration statement review sessions.
  - B. Have this memorandum reviewed by counsel for the underwriters.

## Appendix E

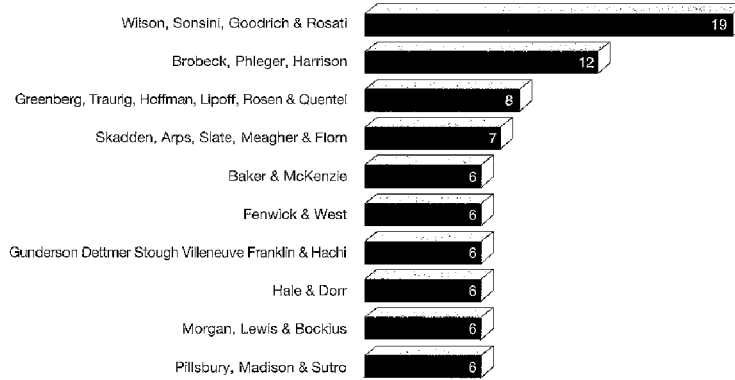
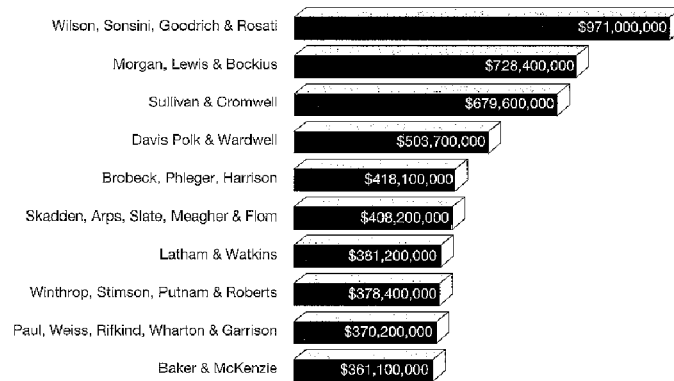
Top Firms based on 1997 Nasdaq National Market IPOs

## Investment Banking Firms



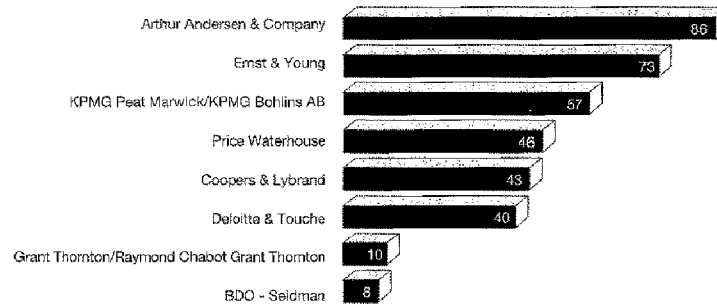


## Legal Counsel

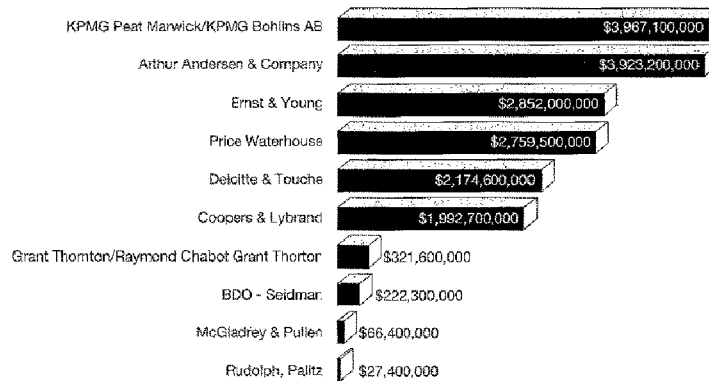
**Number of IPOs****Total Offering Value for IPOs**

## Accounting Firms

## Number of IPOs



## Total Offering Value for IPOs



## Appendix F

1997 Nasdaq National Market Initial Public Offerings

## Firm Commitment Underwritings

Industry	Issuer	Offering Price	Total \$ Value of Offering	Market Value At Time of Offering	Offering Date
Agriculture	Cresud	18.500	82,900,000	1,384,900,000	3/18/97
Agriculture	Heiska	8.500	42,500,000	52,000,000	8/30/97
Agriculture	Scheid Vineyards	10.000	20,000,000	64,000,000	7/24/97
Agriculture	US Timberlands	21.000	156,600,000	156,600,000	11/13/97
Commercial Bank	Bank of the Ozarks	16.000	21,300,000	57,300,000	7/17/97
Commercial Bank	Bay Bancshares, Laporte, Texas	16.000	9,600,000	31,300,000	11/5/97
Commercial Bank	ESG Re	20.000	180,000,000	431,500,000	12/12/97
Commercial Bank	First International Bancorp	13.500	23,000,000	100,900,000	9/22/97
Commercial Bank	Long Island Commercial Bank	14.250	10,000,000	23,400,000	11/19/97
Commercial Bank	Prime Bancshares, Houston, Texas	17.500	36,000,000	181,700,000	9/25/97
Commercial Bank	Southwest Bancorporation, TX	16.500	22,000,000	146,500,000	1/27/97
Construction	Engel General Developers	9.000	32,400,000	77,400,000	9/30/97
Construction	Schuff Steel	8.000	16,000,000	56,000,000	6/30/97
Construction	TransCoastal Marine Services	18.000	90,000,000	146,700,000	10/30/97
Credit Inst.	First Sierra Financial	8.000	16,000,000	61,600,000	5/15/97
Credit Inst.	LINC Group	13.000	26,000,000	66,200,000	11/5/97
Credit Inst.	National Auto Finance Company	8.500	17,000,000	57,200,000	1/29/97
Credit Inst.	T&W Financial	16.900	41,000,000	122,200,000	11/4/97

Source: Securities Data Co., Inc. (973) 622-3100 and Disclosure.

Excludes closed-end funds.

The Nasdaq Stock Market and the NASD do not guarantee the accuracy or completeness of these lists and will not be liable for any error they may contain.

Investment Banking Firms (Managers)	Co-Managers	Legal Counsel (Company)	Auditor
Merrill Lynch & Co.	Beaz, Stearns Caspian Securities Merrill Lynch & Co.	Chadbourne & Parke	Coopers & Lybrand
CS First Boston	Merrill Lynch & Co.	Pillsbury, Madison & Sutro	Arthur Andersen & Company
Crutenden Roth Inc.	Ladlaw Equities Rodman & Renshaw	Brobeck, Phleger, Harrison	Deloitte & Touche
Smith Barney Inc.	Deutsche Morgan Grenfell Paine Webber Prudential Securities	Andrews & Kurth A. G. Edwards & Sons	Arthur Andersen & Company
Stephens	Rosa Law Firm	Baird Kurtz & Dobson	
Hoefler & Arnett	Bracewell & Patterson	Grant Thornton	
Deutsche Morgan Grenfell Donatison, Lufkin & Jannette	Conning & Company Stephens	Paul, Weiss, Rifehd, Wharton & Garrison Deutsche Morgan Grenfell	Deloitte & Touche
Prudential Securities	Keefe, Bruyette & Woods	Bingham, Dana & Gould	Coopers & Lybrand
Sandler O'Neill Partners		Van Nostrand & Martin	KPMG Peat Marwick
Keefe, Bruyette & Woods	Legg Mason Wood Walker	Bracewell & Patterson	Grant Thornton
Keefe, Bruyette & Woods	Legg Mason Wood Walker	Vinson, Elkins	Coopers & Lybrand
Friedman, Billings, Ramsey & Co		Parker Chapin Flattau & Kimpl	
Principal Financial Securities	Crutenden Roth Inc.	Snell & Wilmer	Ernst & Young
Jefferies & Co., Inc.	Johnson Rice & Company	Chamberlain, Hirdlicka, White, Johnson & Williams	Arthur Andersen & Company
Friedman, Billings, Ramsey & Co		Vinson, Elkins	Arthur Andersen & Company
Furman Setz LLC	EVEREN Securities	Kirkland & Ellis	KPMG Peat Marwick
Raymond James & Associates	Crutenden & Co. Inc.	Weil Gotshal & Manges	KPMG Peat Marwick
CIBC Oppenheimer	Prudential Securities	Graham & Dunn	BDO - Seidman

Industry	Company	Offering Price	Total \$ Value Of Offering	Market Value At Time Of Offering	Offering Date
Healthcare	American Physician Partners	12.000	36,000,000	211,900,000	11/20/97
Healthcare	Ameripath	16.000	89,600,000	159,800,000	10/22/97
Healthcare	Birnan Managed Care	5.000	10,000,000	43,800,000	2/12/97
Healthcare	Castle Dental Centers	13.000	32,500,000	62,800,000	9/12/97
Healthcare	Centennial HealthCare	16.000	64,000,000	181,500,000	7/2/97
Healthcare	Lexington Healthcare Group	5.000	5,800,000	21,100,000	5/19/97
Healthcare	Monarch Dental	13.000	35,800,000	77,500,000	7/17/97
Healthcare	Physicians Specialty	8.000	17,800,000	47,200,000	3/20/97
Healthcare	ProMedCo Management Company	9.000	36,000,000	94,500,000	3/12/97
Healthcare	Renex	8.300	24,000,000	79,800,000	10/8/97
Healthcare	Specialty Care Network	8.000	25,800,000	112,400,000	2/6/97
Healthcare	SteriGenics International	12.000	24,000,000	81,900,000	8/13/97
Insurance	AmerUs Life Holdings	16.500	76,900,000	398,400,000	1/28/97
Insurance	Paula Financial	18.500	46,300,000	76,100,000	10/23/97
Insurance	Stirling Cooke Brown Holdings	22.000	65,500,000	166,600,000	11/25/97
Investment Bank	AmeriTrade Holding	15.000	35,300,000	217,700,000	3/3/97
Investment Bank	Conning	13.500	33,800,000	124,300,000	12/15/97
Leisure	Colonial Downs Holdings	9.500	40,400,000	68,900,000	3/17/97
Leisure	Four Media	10.000	50,000,000	95,500,000	2/7/97
Leisure	Macrovision	9.000	21,200,000	60,800,000	3/12/97

Source: Securities Data Co., Inc. (873) 822-3100 and Disclosure.

Excludes closed-end funds.

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Investment Banking Firms (Managers)	Co-Managers	Legal Counsel (Company)	Auditor
Smith Barney Inc.	BarclayAmerica Robertson Stephens Piper, Jaffray Inc.	Bruback, Phleger, Harrison	Arthur Andersen & Company
Donaldson, Lufkin & Jenrette	Morgan Stanley Dean Witter Piper, Jaffray Inc. Smith Barney Inc.	Greenberg, Trautman, Hoffman, Lipoff, Rosen & Guertel	Deloitte & Touche
Royce Investments	Continental Broker-Dealer Corp.	Rudnick & Wolfe	BDO - Seidman
J.C. Bradford	Southcoast Capital	Bracewell & Patterson	Coopers & Lybrand
Alex. Brown & Sons	Donaldson, Lufkin & Jenrette Morgan Stanley Dean Witter Equitable Securities, New York	Nelson, Mullins, Riley & Scarborough	Coopers & Lybrand
Maxon Hill & Co. Inc.	J.W. Barclay	Geisler, Savage, Kaplowitz & Gurin	Richard Eisner
Hambrecht & Quist	Montgomery Securities Salomon Brothers	Goodwin, Procter & Hoar	Arthur Andersen & Company
Southcoast Capital	Barrington Capital Group LP	Machmer, Tally, Polevoy & Misher	Arthur Andersen & Company
Piper, Jaffray Inc.	Robertson Stephens	Dyer, Ellis, Joseph & Cowen	Arthur Andersen & Company
Vector Securities Intl	Needham	Wallace, Bauman, Fodman & Shannon, P.A.	Ernst & Young
CS First Boston	Equitable Securities Lohman Brothers	Morgan, Lewis & Bockius	Ernst & Young
PaineWebber	Piper, Jaffray Inc. Wheat First Butcher & Singer	Gunderson Dettmer Stough Villeneuve	Ernst & Young Franklin & Hachi
Goldman, Sachs & Co.	ABN AMRO Chicago Corp Donaldson, Lufkin & Jenrette Salomon Brothers	Sidley & Austin	KPMG Peat Marwick
Goldman, Sachs & Co.	Conning & Company	Gibson Dunn & Crutcher	KPMG Peat Marwick
Goldman, Sachs & Co.	CIBC Oppenheimer SBC Warburg Dillon Read	Foley & Lardner	KPMG Peat Marwick
CS First Boston	Raymond James & Associates	Mayer Brown & Platt	Deloitte & Touche
Donaldson, Lufkin & Jenrette	A. G. Edwards & Sons	Bryan Cave LLP	KPMG Peat Marwick
Friedman, Billings, Ramsey & Co		Hogan & Hartson	BDO - Seidman
Furman Selz LLC	PaineWebber	Troy & Gould Professional Corp.	Coopers & Lybrand
Montgomery Securities	Hambrecht, Quist & Cowen	Fenwick & West	KPMG Peat Marwick

Industry	Company	Offering Price	Total \$ Value Of Offering	Market Value At Time Of Offering	Offering Date
Leisure	VDI Media	7.000	19,600,000	64,800,000	2/18/97
Manufacturing	3Dfx Interactive	11.000	33,000,000	132,900,000	6/25/97
Manufacturing	8x8	6.500	23,400,000	68,800,000	7/2/97
Manufacturing	Astrom Biosciences	7.000	21,000,000	91,000,000	2/4/97
Manufacturing	AccelGraphics	9.000	23,400,000	71,200,000	4/11/97
Manufacturing	Azom Products	14.000	45,500,000	66,500,000	6/24/97
Manufacturing	Aehr Test Systems	12.000	43,200,000	81,500,000	8/14/97
Manufacturing	AntiViral	9.000	18,000,000	103,400,000	8/3/97
Manufacturing	Apex PC Solutions	9.000	31,500,000	109,400,000	2/19/97
Manufacturing	Applied Films	8.500	16,200,000	39,900,000	11/21/97
Manufacturing	Applied Micro Circuits	8.000	44,400,000	72,800,000	11/25/97
Manufacturing	Ascent Podiatrics	9.000	18,000,000	99,700,000	5/29/97
Manufacturing	Asia Electronics Holding Co	8.000	36,800,000	75,200,000	9/24/97
Manufacturing	ATL Products	11.000	18,200,000	106,200,000	3/7/97
Manufacturing	Aurora Biosciences	10.000	40,000,000	188,500,000	6/19/97
Manufacturing	Authentic Specialty Foods	8.000	32,000,000	45,600,000	8/27/97
Manufacturing	AutoCyte	10.000	31,000,000	73,800,000	9/5/97
Manufacturing	Axiom	12.000	31,200,000	72,900,000	7/8/97
Manufacturing	Beringer Wine Estates Holdings	26.000	117,000,000	421,600,000	10/29/97
Manufacturing	Bioanalytical Systems	8.000	10,000,000	28,000,000	11/24/97
Manufacturing	Bionx Implants	10.500	21,000,000	90,700,000	4/26/97

Source: Securities Data Co., Inc. (973) 622-3100 and Disclosure.

Excludes closed-end funds.

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Investment Banking Firms (Managers)	Co-Managers	Legal Counsel (Company)	Auditor
Prudential Securities	Oppenheimer	Kaye, Scholer, Fierman, Hayes & Handler	Price Waterhouse
Robertson Stephens	Montgomery Securities UBS Securities	Wilson, Sonsini, Goodrich & Rosati	Price Waterhouse
Montgomery Securities	Donaldson, Lufkin & Jenrette	Wilson, Sonsini, Goodrich & Rosati	Price Waterhouse
Cowan	JP Morgan & Co. Inc.	Gray Cary Ware & Freidenrich	Coopers & Lybrand
Cowan	Robertson Stephens	Venture Law Group Scudderline Financial Group, Inc.	Price Waterhouse
A. G. Edwards & Sons	Morgan Keegan	Gibson, Dunn & Crutcher	Ernst & Young
Oppenheimer	Needham	Wilson, Sonsini, Goodrich & Rosati	Coopers & Lybrand
Paulson Investment	First Colonial Securities Grp Millennium Securities Corp.	Atar Wynne Hewitt Dodson & Smeritt	Arthur Andersen & Company
Montgomery Securities	Dain Bosworth	Davis Wright Tremaine	Coopers & Lybrand
Needham	D. A. Davidson	Varnum, Riddiing, Schmidt & Howlett	Arthur Andersen & Company
BancAmerica Robertson Stephens	NationsBanc Montgomery Sec Cowan	Venture Law Group	Ernst & Young
Cowan	Volpe, Watty & Company Adams, Haskness & Hill	Hale, Dorr	Coopers & Lybrand
Barrington Capital Group LP	Value Investing Partners, Inc.	Proskauer, Rose, Goetz & Mendelsohn	Arthur Andersen & Company
Montgomery Securities	Crutenden Roth Inc.	Robock, Pfeiffer Harrison	Ernst & Young
Alex. Brown & Sons	Hambrecht & Quist Robertson Stephens	Coadley Goddard LLP	Ernst & Young
Crutenden Roth Inc.	Sutro Wadsworth Morgan Securities	Vinson, Elkins	McGladrey & Pullen
SBC Warburg Dillon Read	UBS Securities	Palmer Dodge	Ernst & Young
Lehman Brothers	JP Morgan & Co. Inc.	Wolf, Block, Schorr & Sells-Cohen	Arthur Andersen & Company
Goldman, Sachs & Co.	Donaldson, Lufkin & Jenrette Hambrecht & Quist Smith Barney Inc.	Pillsbury, Madison & Sutro	Price Waterhouse
Roney & Co.	The Ohio Company	Ice Miller Donadio & Ryan	Ernst & Young
UBS Securities	Hambrecht & Quist Volpe, Watty & Company	Lowerstein, Sandler, Kohl, Fisher & Boylan	KPMG Peat Marwick

Industry	Company	Offering Price	Total \$ Value Of Offering	Market Value At Time Of Offering	Offering Date
Manufacturing	Biora	16.500	53,600,000	170,800,000	2/3/97
Manufacturing	Biosite Diagnostics	12.000	26,800,000	147,400,000	2/12/97
Manufacturing	Broughton Foods	15.000	19,500,000	86,400,000	12/8/97
Manufacturing	Brunswick Technologies	9.500	23,800,000	43,200,000	2/5/97
Manufacturing	C3	15.000	45,000,000	148,100,000	11/14/97
Manufacturing	Cardina	7.000	15,900,000	56,500,000	6/5/97
Manufacturing	Cell Therapeutics	10.000	30,000,000	203,000,000	3/21/97
Manufacturing	Cerus	12.000	24,000,000	100,700,000	1/30/97
Manufacturing	Ciena	23.000	115,000,000	418,400,000	2/7/97
Manufacturing	CMP Media	22.000	119,000,000	497,700,000	7/24/97
Manufacturing	Coinstar	10.500	31,500,000	41,800,000	7/2/97
Manufacturing	Compass Plastics	6.000	13,200,000	38,100,000	9/3/97
Manufacturing	Computer Motion	14.000	35,000,000	96,300,000	8/11/97
Manufacturing	Concord Communications	14.000	40,600,000	161,100,000	10/15/97
Manufacturing	Corsia	13.000	39,000,000	140,400,000	10/11/97
Manufacturing	Corsair Communications	15.000	37,500,000	196,900,000	7/29/97
Manufacturing	Coulter Pharmaceuticals	12.000	30,000,000	120,100,000	1/28/97
Manufacturing	CTB International	14.000	70,000,000	180,900,000	8/20/97
Manufacturing	Deorane Aircraft Holdings	12.000	33,600,000	63,000,000	4/18/97
Manufacturing	Denali	13.000	27,300,000	55,700,000	11/20/97

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Investment Banking Firms (Managers)	Co-Managers	Legal Counsel (Company)	Auditor
Morgan Stanley	Alex. Brown & Sons Morgan Stanley International	Skadden, Arps, Slate, Meagher & Flom	KPMG Bipkies AB
Coven	Alex. Brown & Sons	Pillsbury, Madison & Suto	Ernst & Young
Advest	Ferlis, Baker Watts	Arnold & Porter	Coopers & Lybrand
Josephthal Lyon & Ross, Inc.	Southwest Securities	Gadsby & Hannah	Coopers & Lybrand
Paulson Investment		Womble Carlyle Sandridge & Rice	Deloitte & Touche
Bear, Stearns	Dain Bosworth	Venture Law Group	Ernst & Young
UBS Securities	Montgomery Securities Raymond James & Associates	Shearman & Sterling	Ernst & Young
Morgan Stanley	Alex. Brown & Sons	Cooley, Godward, Castro, Huddleson & Tatum	Ernst & Young
Goldman, Sachs & Co.	Alex. Brown & Sons Wessels, Arnold & Henderson William K. Woodruff	Hogan & Hartson	Pricewaterhouse
Goldman, Sachs & Co.	Lazard Freres & Co. Bear, Stearns Furman Setz LLC	Dow, Lohnes & Albertson	Coopers & Lybrand
Smith Barney Inc.	Hambrecht & Quist	Cooley, Godward, Castro, Huddleson & Tatum	Deloitte & Touche
Crutenden Roth Inc.	Josephthal Lyon & Ross, Inc.	Greenberg, Traurig, Hoffman, Lipoff, Rosen & Quentel	Marcum & Kliegman LLP
Montgomery Securities	Piper, Jaffray Inc	Stradling, Yocum, Carlson & Raith	Arthur Andersen & Company
NationsBanc Montgomery Sec	BancAmerica Robertson Stephens Wessels, Arnold & Henderson	Testa Hurwitz Thibault	Arthur Andersen & Company
Lohman Brothers	Invened Associates Vector Securities Intl	Venture Law Group	Ernst & Young
Deutsche Morgan Grenfell	Hambrecht & Quist Wessels, Arnold & Henderson	Brobeck, Phleger, Harrison	KPMG Peat Marwick
Hambrecht & Quist	Alex. Brown & Sons Pacific Growth Equities	Cooley Godward LLP	Ernst & Young
Donaldson, Lufkin & Jenrette	George K. Baum Chase Securities	Simpson Thacher & Bartlett	Deloitte & Touche
Schroder Wertheim & Co. Inc.	Dillon, Reed ING Barings	Spolin & Silverman	Pricewaterhouse
Morgan Keegan	Rauscher Pierce Renkes	Hutcheson & Grundy	Ernst & Young

Industry	Company	Offering Price	Total \$ Value Of Offering	Market Value At Time Of Offering	Offering Date
Manufacturing	Denison International	16.000	81,000,000	175,700,000	8/1/97
Manufacturing	Digital Lightwave	12.000	55,200,000	358,000,000	2/5/97
Manufacturing	DOCdata	13.000	65,000,000	104,000,000	4/30/97
Manufacturing	DTM	8.000	24,300,000	48,800,000	5/2/97
Manufacturing	EDAP	9.000	38,000,000	78,200,000	7/31/97
Manufacturing	Eltek	5.000	7,500,000	23,700,000	1/22/97
Manufacturing	Emcore	8.000	22,500,000	48,500,000	3/6/97
Manufacturing	Endocardial Solutions	9.000	20,300,000	72,100,000	3/19/97
Manufacturing	EPIX Medical	7.000	14,000,000	58,000,000	1/30/97
Manufacturing	ErgoBlit	7.000	11,800,000	38,800,000	2/3/97
Manufacturing	Esat Telecom	13.000	78,000,000	391,700,000	11/7/97
Manufacturing	Excel Switching	21.000	94,500,000	684,400,000	11/4/97
Manufacturing	Excelsior-Henderson Motorcycle	7.500	30,000,000	74,100,000	7/23/97
Manufacturing	FARO Technologies	12.000	40,300,000	117,100,000	9/17/97
Manufacturing	Faroudja	6.000	18,000,000	70,500,000	10/30/97
Manufacturing	Fieldworks	6.500	13,800,000	55,800,000	3/19/97
Manufacturing	First Aviation Services	10.000	38,000,000	87,500,000	2/27/97
Manufacturing	Focal	10.000	25,000,000	47,300,000	12/11/97
Manufacturing	Friede Goldman International	17.000	79,300,000	201,400,000	7/21/97
Manufacturing	Galileo Technology	17.000	51,000,000	333,900,000	7/28/97
Manufacturing	GameTech International	11.000	40,800,000	84,900,000	11/25/97
Manufacturing	GlobeComm Systems	10.000	27,500,000	86,100,000	8/7/97

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Investment Banking Firms (Managers)	Co-Managers	Legal Counsel (Company)	Auditor
Lehman Brothers	Schroder & Co Inc	Willkie Farr & Gallagher	
CS First Boston	Fuman Setz LLC	Baker & McKersie	Coopers & Lybrand
CS First Boston	Wedbush Morgan Securities	Skadden, Arps, Slate, Meagher & Flom	KPMG Peat Marwick
A. G. Edwards & Sons	Ladenburg, Thalmann	Vinson, Ellins	Ernst & Young
Lehman Brothers	Oppenheimer	Clayton, Gottlieb, Steen & Hamilton	Coopers & Lybrand
Josephthal		Carter, Ledyard & Milburn	Price Waterhouse
Donaldson, Lufkin & Jenrette	Needham	White & Case	Coopers & Lybrand
Piper, Jaffray Inc	Volpe, Welty & Company	Dorsey & Whitney	Ernst & Young
Hambrecht & Quist	Wessels, Arnold & Henderson	Palmer Dodge	Ernst & Young
Crutenden Roth Inc.	Principal Financial Securities	Wolin, Fuller, Ridley & Miller LLP	KPMG Peat Marwick
Donaldson, Lufkin & Jenrette	CS First Boston Cowen	Davis Polk & Wardwell	KPMG Peat Marwick
Morgan Stanley Dean Witter	Hambrecht & Quist NationsBanc. Montgomery Sec	Testa Hurwitz Thibault	Arthur Andersen & Company
John G. Kinnard	Miller, Johnson & Kuehn, Inc.	Faegre & Benson	Arthur Andersen & Company
Raymond James & Associates	Hanfen, Imhoff	Foley & Lardner	Deloitte & Touche
BancAmerica Robertson Stephens	Volpe Brown Whelan & Co	Buchalter, Nemer, Fields & Younger	Ernst & Young
R. J. Steichen	Josephthal Lyon & Ross, Inc. Needham	Dorsey & Whitney	Arthur Andersen & Company
Smith Barney Inc.	Dillon, Read	O'Melveny & Myers	Ernst & Young
Lehman Brothers	Piper, Jeffrey Inc. Pacific Growth Equities	Wilson, Sonsini, Goodrich & Rossell	Ernst & Young
Jefferies & Co., Inc.	Best, Stearns Johnson Rice & Company	Andrews & Kurth	Arthur Andersen & Company
Alex. Brown & Sons	Montgomery Securities Robertson Stephens	McCutchen, Doyle, Brown & Eiser	Ernst & Young
Donaldson, Lufkin & Jenrette	Prudential Securities	Morgan, Lewis & Bockius	Ernst & Young
PatheWebber	Unterberg Harris	Brobeck, Phleger, Harrison	Ernst & Young

Industry	Company	Offering Price	Total \$ Value Of Offering	Market Value At Time Of Offering	Offering Date
Manufacturing	Gulf Island Fabrication	15,000	30,000,000	82,500,000	4/3/97
Manufacturing	Hybrid Networks	14,000	37,800,000	139,600,000	11/12/97
Manufacturing	Hyseq	14,000	42,000,000	164,100,000	8/7/97
Manufacturing	I.C. Isaacs & Company	10,000	38,000,000	442,200,000	12/17/97
Manufacturing	ICOS Vision Systems	10,000	22,500,000	101,400,000	12/9/97
Manufacturing	ILEX Oncology	12,000	30,000,000	140,200,000	2/20/97
Manufacturing	InterCorp Excelle	5,000	5,300,000	19,800,000	10/10/97
Manufacturing	International Isotopes	9,000	19,800,000	55,000,000	8/14/97
Manufacturing	International Manufacturing	11,500	57,500,000	141,800,000	10/22/97
Manufacturing	inTEST	7,500	17,100,000	44,300,000	6/17/97
Manufacturing	JetFax	8,000	28,000,000	30,100,000	6/10/97
Manufacturing	Kaynar Technologies	14,500	29,000,000	49,200,000	5/8/97
Manufacturing	Kos Pharmaceuticals	15,000	62,300,000	212,200,000	3/7/97
Manufacturing	Laser Power	5,500	9,100,000	25,800,000	8/19/97
Manufacturing	LeukoSite	6,000	15,000,000	54,800,000	8/15/97
Manufacturing	MAS Technology	14,000	28,000,000	91,000,000	6/19/97
Manufacturing	Meade Instruments	7,000	23,600,000	87,600,000	4/9/97
Manufacturing	MegaBio	12,000	30,000,000	146,700,000	9/15/97
Manufacturing	Melitta International	10,000	35,000,000	115,300,000	6/4/97
Manufacturing	Micro Therapeutics	8,000	9,600,000	36,600,000	2/18/97
Manufacturing	MMC Networks	11,000	36,500,000	167,800,000	10/29/97

Source: Securities Data Co., Inc. (973) 822-3100 and Disclosure.

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Investment Banking Firms (Managers)	Co-Managers	Legal Counsel (Company)	Auditor
Morgan Keegan	Raymond James & Associates Johnson Rice & Company	Jones, Walker, Waechter, Potevent, Carrens, & Denagre	Price Waterhouse
NationsBanc Montgomery Sec	UBS Securities	Fenwick & West	Coopers & Lybrand
Lohman Brothers	Smith Barney Inc. Fahnestock	Sachnoff Weaver & Rubenstein	Ernst & Young
Robinson-Humphrey	Legg Mason Wood Walker	Piper & Marbury	BCO - Soldman
BancAmerica Robertson Stephens	Cowen NationsBanc Montgomery Sec KB Securities NY	Brown Rudnick, Freed & Gossmor	KPMG Peat Marwick
Salomon Brothers	Cowen Smith Barney Inc.	Fulbright & Jaworski	Arthur Andersen & Company
Sharpe Capital	Aegis Capital Keefe Maus and Shane Inc.	Gersten, Savage, Kaplowitz & Curtin	Schwartz Levitsky Feldman
Keane Securities		Epstein Becker Borsody & Green	KPMG Peat Marwick
NationsBanc Montgomery Sec	BT Alex. Brown UBS Securities	Wilson, Sonsini, Goodrich & Rosati	Price Waterhouse
Janney Montgomery Scott	Needham	Saul, Ewing, Perlick & Saul	KPMG Peat Marwick
Prudential Securities	Cowen	General Counsel	Deloitte & Touche
Lehman Brothers	PaineWebber	O'Melveny & Myers	Arthur Andersen & Company
Cowen	Dillon, Read Salomon Brothers	Holland & Knight	Arthur Andersen & Company
Cutler & Ritz Inc.	L.H. Friend, Weiss & Franklin	Cookley Goddard LLP	Ernst & Young
Hambrecht & Quist	UBS Securities	Bingham, Dana & Gould	Arthur Andersen & Company
Hambrecht & Quist	Oppenheimer	Brobeck, Phlogor, Harrison	KPMG Peat Marwick
Morgan Keegan	Crowell, Weedon	O'Melveny & Myers	Price Waterhouse
NationsBanc Montgomery Sec	Hambrecht & Quist	Cookley Goddard LLP	Ernst & Young
Montgomery Securities	Robertson Stephens	Morris, Manning & Martin	Arthur Andersen & Company
UBS Securities	Volpe, Wetly & Company	Stradling, Yocca, Carlson & Rauth	Coopers & Lybrand
Morgan Stanley Dean Witter	Deutsche Morgan Grenfell Weesels, Arnold & Henderson	Wilson, Sonsini, Goodrich & Rosati	Price Waterhouse

Industry	Company	Offering Price	Total \$ Value Of Offering	Market Value At Time Of Offering	Offering Date
Manufacturing	Nanophase Technologies	8.000	32,000,000	32,500,000	11/26/97
Manufacturing	NeoMagic	12.000	38,000,000	132,900,000	3/13/97
Manufacturing	Neutral Posture Ergonomics	6.000	6,000,000	19,200,000	10/20/97
Manufacturing	NewCom	9.500	19,000,000	91,000,000	9/15/97
Manufacturing	Nexar Technologies	9.000	22,500,000	82,800,000	4/8/97
Manufacturing	NovAtel Inc	7.500	19,300,000	76,100,000	2/3/97
Manufacturing	Novel Denim Holdings	18.000	76,500,000	169,900,000	7/23/97
Manufacturing	Ocular Sciences	16.500	118,800,000	333,100,000	8/4/97
Manufacturing	Omniquip International	14.000	112,000,000	189,500,000	3/20/97
Manufacturing	ORBIT/FR	8.250	16,500,000	49,500,000	6/17/97
Manufacturing	OSi Systems	13.500	50,000,000	173,000,000	10/1/97
Manufacturing	Overland Data	10.000	30,000,000	99,300,000	2/21/97
Manufacturing	PalEx	7.500	22,500,000	75,900,000	3/20/97
Manufacturing	Peak International	12.000	36,000,000	161,500,000	8/29/97
Manufacturing	Photoelectron	6.500	17,000,000	55,400,000	1/29/97
Manufacturing	Positron Fiber Systems	11.000	55,000,000	122,700,000	8/18/97
Manufacturing	Power Integrations	8.000	32,000,000	32,200,000	12/12/97
Manufacturing	Power-One	14.000	70,000,000	228,300,000	9/30/97
Manufacturing	Princeton Video Image	7.000	25,000,000	51,200,000	12/16/97
Manufacturing	Progenics Pharmaceuticals	8.000	16,000,000	69,600,000	11/19/97
Manufacturing	Progenitor	7.000	19,300,000	85,800,000	8/6/97

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Investment Banking Firms (Managers)	Co-Managers	Legal Counsel (Company)	Auditor
Donaldson, Lufkin & Jenrette	Furman Selz LLC CIBC Oppenheimer	Katten Muchin & Zavis	Ernst & Young
Morgan Stanley	Montgomery Securities Robertson Stephens	Wilson, Sonsini, Goodrich & Rosati	Ernst & Young
Huberman, Margaretten & Straus		Haynes & Boone	Deloitte & Touche
Joseph Charles & Associates		Pillsbury, Madison & Sutro	Parcell Kier Forster
Sands Brothers & Co., Ltd.	Credit Lyonnais Securities (US)	Choate, Hall & Stewart	Arthur Andersen & Company
Montgomery Securities	Prudential Securities	Ornick, Herrington & Sutcliffe	Arthur Andersen & Company
Morgan Stanley Dean Witter	Montgomery Securities Smith Barney Inc.	Simpson Thacher & Barlett	
Morgan Stanley Dean Witter	Dear, Stearns Cowen	Fenwick & West	KPMG Post Marwick
Morgan Stanley	CS First Boston J. Henry Schroder Robert W. Baird & Co	Dickstein, Shapiro & Morin	Price Waterhouse
Pennsylvania Merchant Group	Unterberg Harris	Blank, Rome, Contisky & Mccauley	Ernst & Young
BancAmerica Robertson Stephens	William Blair Volpe Brown Whelan & Co	Troy & Gould Professional Corp.	Deloitte & Touche
Jefferies & Co., Inc.	Crutenden Roth Inc.	Baker & McKenzie	Price Waterhouse
Alex. Brown & Sons	Montgomery Securities	Andrews & Kurth	Arthur Andersen & Company
Donaldson, Lufkin & Jenrette Peregrine Brokerage	Boar, Stearns	Davis Polk & Wardwell	Deloitte & Touche
Needham	Dain Bosworth	Goulston & Storrs P.C.	Arthur Andersen & Company
Robertson Stephens	Montgomery Securities	Milbank, Tweed, Hadley & McCloy	Ernst & Young
Hambrecht & Quist	NationsBanc Montgomery Sec BancAmerica Robertson Stephens	Gray Cary Ware & Friederich	Arthur Andersen & Company
Stephens	Robertson Stephens Montgomery Securities	O'Melveny & Myers	Deloitte & Touche
Allen & Co	Barington Capital Group LP	Smith, Stratton, Wise, Hisher and Brennan	Coopers & Lybrand
CIBC Oppenheimer	BancAmerica Robertson Stephens Vector Securities International	Dowry Ballantine	Coopers & Lybrand
Lehman Brothers	Genesis Merchant Group Secs	Morrison & Foerster	Coopers & Lybrand

Industry	Company	Offering Price	Total \$ Value Of Offering	Market Value At Time Of Offering	Offering Date
Manufacturing	Racing Champions	14.000	70,000,000	167,300,000	8/11/97
Manufacturing	RADCOM	9.500	21,800,000	91,200,000	9/24/97
Manufacturing	Rambus	12.000	33,000,000	121,900,000	5/13/97
Manufacturing	Retrospective	6.000	3,000,000	13,500,000	9/23/97
Manufacturing	RF Micro Devices	12.000	38,400,000	75,400,000	6/3/97
Manufacturing	RIT Technologies	8.000	18,400,000	66,800,000	7/22/97
Manufacturing	Rock of Ages	18.500	58,700,000	124,200,000	10/21/97
Manufacturing	Schick Technologies, Inc.	18.500	32,400,000	179,600,000	7/1/97
Manufacturing	SCM Microsystems	13.000	43,800,000	86,500,000	10/6/97
Manufacturing	Signature Eyewear	10.000	18,000,000	52,000,000	9/11/97
Manufacturing	Silgan Holdings	20.000	90,000,000	377,300,000	2/13/97
Manufacturing	Special Metals	16.500	63,500,000	285,300,000	2/25/97
Manufacturing	Spectra-Physics Lasers	10.000	24,000,000	158,100,000	12/11/97
Manufacturing	Spectrix	7.000	15,400,000	53,000,000	7/1/97
Manufacturing	Spiros Development II	15.000	88,000,000	790,300,000	12/19/97
Manufacturing	Storage Dimensions	7.000	18,900,000	54,900,000	9/11/97
Manufacturing	Sun Hydraulics	9.500	19,000,000	57,000,000	1/9/97
Manufacturing	Total Control Products	8.000	16,000,000	39,300,000	3/11/97
Manufacturing	Transcend Therapeutics	10.000	18,000,000	25,900,000	7/2/97
Manufacturing	Transcrypt International	8.000	23,200,000	74,300,000	1/22/97
Manufacturing	Tropical Sportswear Intl	12.000	48,000,000	91,200,000	10/28/97
Manufacturing	Unifab International	18.000	80,700,000	82,800,000	9/18/97

Source: Securities Data Co., Inc. (973) 622-3100 and Disclosure.

Excludes closed-end funds.

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Investment Banking Firms (Managers)	Co-Managers	Legal Counsel (Company)	Auditor
Robert W. Baird & Co	William Blair J.C. Bradford	Fleinhart, Boerner, Van Deuren, Norris	Arthur Andersen & Company
Unterberg Harris	Pennsylvania Merchant Group Fahnestock	Well Gotshal & Manges	Price Waterhouse
Morgan Stanley	Hambrecht & Quist Robertson Stephens	Wilson, Sonsini, Goodrich & Rosati	Coopers & Lybrand
Kensington Securities, Inc.	Gunn & Company	Individual Lawyer	A.J. Robbins, T.C.
Montgomery Securities	Hambrecht & Quist Oppenheimer	Womble Carlyle Sandridge & Rice	Ernst & Young
Unterberg Harris	Pennsylvania Merchant Group	Well Gotshal & Manges	Price Waterhouse
Raymond James & Associates		Skadden, Arps, Slate, Meagher & Flom	KPMG Peat Marwick
Lehman Brothers	J.P. Morgan & Co. Inc. Pacific Growth Equities	Kelley Dye & Warren	Price Waterhouse
Coven	Hambrecht & Quist	Wilson, Sonsini, Goodrich & Rosati	KPMG Peat Marwick
Fechtor, Detwiler	Van Kasper	Troop Meisinger Steuber & Pasich, LLP	Atschuler, Melvin & Glasser
Goldman, Sachs & Co.	Morgan Stanley Salomon Brothers	Winthrop, Stimson, Putnam & Roberts	Ernst & Young
Morgan Stanley	Salomon Brothers Credit Lyonnais Securities (US)	Paul, Weiss, Rifekind, Wharton & Garrison	Ernst & Young
NationalBanc Montgomery Sec	Coven	Dechert Price Rhoads	Coopers & Lybrand
Hambrecht & Quist	Volpe Brown Whelan & Co	Wilson, Sonsini, Goodrich & Rosati	Arthur Andersen & Company
Merrill Lynch & Co.	Donaldson, Lufkin & Jenrette	Brobeck, Phleger, Harrison	Deloitte & Touche
Smith Barney Inc.	Solomon Brothers	Wilson, Sonsini, Goodrich & Rosati	Price Waterhouse
A. G. Edwards & Sons	Robert W. Baird & Co	Shumaker, Loop & Kendrick	Price Waterhouse
Adams, Harkness & Hill	A. G. Edwards & Sons	D'Ancona & Pfauum	Arthur Andersen & Company
EVEREN Securities	Principal Financial Securities	Hale, Dorr	Ernst & Young
Dain Bosworth	Furman Selz LLC	Manatt, Phelps & Phillips	Coopers & Lybrand
Prudential Securities	Oppenheimer	Foley & Lardner	Ernst & Young
Morgan Keegan	Stephens	Jones, Walker, Waechter, Potevent, Canara, & Denegre	Ernst & Young

Industry	Company	Offering Price	Total \$ Value Of Offering	Market Value At Time Of Offering	Offering Date
Manufacturing	Vari Lite International	12.000	24,000,000	93,600,000	10/16/97
Manufacturing	Vista Medical Technologies	9.000	36,000,000	41,600,000	7/2/97
Manufacturing	Warner Chilcott PLC	17.500	68,300,000	151,600,000	8/9/97
Manufacturing	Wesley Jensen Vision Care	15.000	36,800,000	98,100,000	2/12/97
Manufacturing	Wheels Sports Group	5.900	5,300,000	18,000,000	4/16/97
Manufacturing	Wilson's The Leather Experts	9.000	9,900,000	96,500,000	5/27/97
Manufacturing	Young Innovations	12.000	24,000,000	74,500,000	11/4/97
Manufacturing	Yuris Systems	12.000	46,000,000	290,500,000	2/5/97
Manufacturing	Zindart Industrial	10.000	15,200,000	65,000,000	3/4/97
Manufacturing	Zymetx	8.000	18,400,000	68,600,000	10/29/97
Mortgage Bank	Long Beach Financial	6.500	141,400,000	162,500,000	4/28/97
Mortgage Bank	New Century Financial	11.000	38,500,000	174,800,000	6/25/97
Mtg Securities	Franchise Mortgage Acceptance	18.000	180,000,000	500,800,000	11/18/97
Natural Resource	Brigham Exploration	8.000	24,000,000	95,400,000	5/8/97
Natural Resource	Cal Dive International	15.000	54,000,000	314,200,000	7/1/97
Natural Resource	Carrizo Oil & Gas	11.000	27,500,000	84,800,000	8/6/97
Natural Resource	Eagle Geophysical	17.000	100,000,000	125,800,000	8/5/97
Natural Resource	Edge Petroleum	16.500	36,600,000	117,100,000	2/25/97
Natural Resource	OWNI Energy Services	11.000	33,000,000	33,000,000	12/4/97
Natural Resource	Oyo Geospace	14.000	28,000,000	70,000,000	11/20/97
Natural Resource	Petroglyph Energy	12.500	31,300,000	66,700,000	10/20/97

Source: Securities Data Co., Inc. (973) 622-3100 and Disclosure.

Excludes closed-end funds.

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Investment Banking Firms (Managers)	Co-Managers	Legal Counsel (Company)	Auditor
A. G. Edwards & Sons	EVEREN Securities	Gardere & Wynne	Deloitte & Touche
Goldman, Sachs & Co.	Solomon Brothers	Brobeck, Phleger, Harrison	Ernst & Young
Cowan	Dillon, Read Oppenheimer	Cahill Gordon & Reindel	KPMG Peat Marwick
Merrill Lynch & Co.	Alax, Brown & Sons BT Securities Salomon Brothers Bear, Stearns	Kirkland & Ellis	Pricewaterhouse
Schneider Securities, Inc.		Berliner Zissser Walter & Gallogos	Coopers & Lybrand
Equity Securities Trading		Faegre & Benson	Arthur Andersen & Company
Robert W. Baird & Co	Clary Gull Relland & McDavit	Armstrong, Teasdale, Schiffly & Davis	Arthur Andersen & Company
Alax, Brown & Sons	Wessels, Arnold & Henderson	Fried, Frank, Harris, Shriver & Jacobson	Deloitte & Touche
Van Kasper		McCutchen, Doyle, Brown & Emerson	Arthur Andersen & Company
Capital West Securities	Millennium Financial Group Comvest Partners	Phillips, McCall	Ernst & Young
Friedman, Billings, Ramsey & Co		Gibson Duni & Crutcher	Deloitte & Touche
Montgomery Securities	Piper, Jaffray Inc.	O'Melveny & Myers	KPMG Peat Marwick
NationsBanc Montgomery Sec CS First Boston	PaineWebber	Freshman, Manantz, Oranski, Cooper & Klein	KPMG Peat Marwick
Bear, Stearns	Howard, Weil, Labrousse Rauscher Pierce Refenes	Thompson & Knight	Pricewaterhouse
Schroder & Co Inc	Raymond James & Associates Simmmons & Co International	Robins, Kaplan, Miller & Cinisi	Arthur Andersen & Company
Schroder Wertheim & Co Inc	Jefferies & Co., Inc.	Baker & Botts	Arthur Andersen & Company
Prudential Securities	Simmmons & Co. International	Gardere Wynne Sewell & Riggs	Arthur Andersen & Company
Raymond James & Associates	Jefferies & Co., Inc. Principal Financial Securities	Baker & Botts	Deloitte & Touche
Lehman Brothers	Prudential Securities Raymond James & Associates	Jones, Walker, Waschter, Pollevent, Carriere, & Denegre	Arthur Andersen & Company
Rauscher Pierce Refenes	Raymond James & Associates	Fulbright & Jaworski	Coopers & Lybrand
Prudential Securities	Oppenheimer Johnson Rice & Company	Thompson & Knight	Arthur Andersen & Company

Industry	Company	Offering Price	Total \$ Value Of Offering	Market Value At Time Of Offering	Offering Date
Oil/Gas Pipeline	Continental Natural Gas	11.250	23,600,000	64,300,000	7/31/97
Other Finance	American Capital Strategies	15.000	126,000,000	147,100,000	8/29/97
Other Finance	Birman Managed Cars, Inc.	5.000	10,000,000	42,405,410	2/12/97
Other Finance	Community First Banking	20.000	40,000,000	31,000,000	7/1/97
Other Finance	Consolidation Capital	20.000	480,000,000	526,000,000	11/25/97
Other Finance	Euronet Services, Inc.	13.500	71,600,000	170,400,000	3/6/97
Other Finance	Frost Hanna Capital Group	6.000	10,200,000	13,200,000	4/10/97
Other Finance	Great Pee Dee Bancorp, Inc.	10.000	22,021,250	22,000,000	12/31/97
Other Finance	GS Financial Corp.	10.000	34,365,000	22,100,000	4/1/97
Other Finance	Hemlock Federal Financial Corporation	10.000	20,763,250	13,300,000	4/2/97
Other Finance	Marathon Financial Corporation	5.000	2,500,000	9,400,000	10/3/96
Other Finance	NetBANK	12.000	42,000,000	57,200,000	7/28/97
Other Finance	Shore Bank	8.250	2,709,589	14,800,000	8/20/97
Other Finance	Sucesso Bancshares, Inc.	12.500	15,000,000	34,400,000	10/21/97
Other Finance	Union Community Bancorp	10.000	3,041,750	19,500,000	12/29/97
Other Finance	Wintrust Financial Corporation	15.500	21,235,000	123,800,000	3/13/97
Other Services	Bright Horizons Holdings	13.000	38,600,000	24,800,000	11/7/97
Other Services	Brookdale Living Communities	11.500	51,800,000	74,800,000	5/1/97
Other Services	CorporateFamily Solutions	10.000	23,500,000	32,500,000	8/12/97
Other Services	EduTrek International	14.000	36,400,000	130,800,000	8/23/97
Pers/Busi/Rep Svc	A Consulting Team	12.000	21,600,000	64,200,000	8/6/97
Pers/Busi/Rep Svc	Advanced Communication Systems	7.500	18,800,000	42,700,000	6/27/97
Pers/Busi/Rep Svc	Advantage Learning System	16.000	44,800,000	263,200,000	9/25/97
Pers/Busi/Rep Svc	AHL Services	10.000	25,000,000	108,500,000	3/27/97
Pers/Busi/Rep Svc	Amazon.com	18.000	54,000,000	366,300,000	5/15/97

Source: Securities Data Co., Inc. (973) 622-3100 and Disclosure.

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Investment Banking Firms (Managers)	Co-Managers	Legal Counsel (Company)	Auditor
Oppenheimer	Southwest Securities	Hall, Estill, Hardwick, Gable, Golden	Ernst & Young
Friedman, Billings, Ramsey & Co.		Arnold & Porter	BDO Seidman, LLP
Royce Investment Group	Continental Broker-Dealer Corp.	Rudnick & Wolfe	Porter Keadle Moore, LLP
Trident Securities		Powell, Goldstein, Frazer & Murphy	Pricewaterhouse
Friedman, Billings, Ramsey & Co.		Morgan, Lewis & Bockius	KPMG Peat Marwick
ING Barings	Arnhold and S. Bleichroeder ING Barings Nomura Securities New York Inc.	Arent, Fox, Kintner, Plotkin & Kahn	Arthur Andersen & Company
First Cambridge Securities Co.		Stearns Weaver Miller	Dixon Oden & Co.
Trident Securities		Luss Lehman Gortman Pomeroy & Schick	LaPorte, Sehn, Rongard Hand
Charles Webb & Company		Elias, Matz, Tieman & Herrick, LLP	Crowe, Chizek & Company
Charles Webb & Company		Silver, Freedman & Taft, LLP	Yount, Hyde & Barbour, P.C.
McKinnon & Company, Inc.		Kaufman & Canoles	Deloitte & Touche
Morgan Keegan	Interstate Johnson Lane	Powell, Goldstein, Frazer & Murphy	BDO Seidman, LLP
McKinnon & Company, Inc.		LeClair Ryan	McGladrey & Pullen, LLP
Everen Securities, Inc.		Much Shelist Freed Deinberg Arment Bell & Ruh	Geo S. Olive & Co.
Trident Securities, Inc.		Barnes & Thornburg	KPMG Peat Marwick, LLP
Everen Securities, Inc.		Vodder, Rice, Kaufman, Kammholz & Day	Pricewaterhouse
BT Alex. Brown	EVEREN Securities	Ropes & Gray	Ernst & Young
Friedman, Billings, Ramsey & Co.		Winston & Strawn	Arthur Andersen & Company
Montgomery Securities	J.C. Bradford	Bass, Berry & Sims	Deloitte & Touche
Smith Barney Inc.	Robinson-Humphrey	Smith, Gambrell & Russell	Ernst & Young
Robinson-Humphrey	Wheat First Butcher & Singer	Orlick, Herrington & Sutcliffe	Arthur Andersen & Company
A. G. Edwards & Sons	Ferris, Baker Watts	Gibson Dunn & Crutcher	Arthur Andersen & Company
Piper, Jaffray Inc.	Montgomery Securities	Godfrey & Kahn	Arthur Andersen & Company
Alex. Brown & Sons	Robinson-Humphrey	King Spalding	Ernst & Young
Deutsche Morgan Grenfell	Alex. Brown & Sons • Hambrecht & Quist	Parkins Cole	

Industry	Company	Offering Price	Total \$ Value Of Offering	Market Value At Time Of Offering	Offering Date
Pers/Bus/Rep Svc	Aris	15.000	30,300,000	141,400,000	6/18/97
Pers/Bus/Rep Svc	ASI Solutions	8.000	10,800,000	38,600,000	4/15/97
Pers/Bus/Rep Svc	At Home	10.500	94,500,000	233,800,000	7/11/97
Pers/Bus/Rep Svc	BEA Systems	6.000	30,000,000	323,200,000	4/10/97
Pers/Bus/Rep Svc	Best Software	13.000	54,000,000	141,700,000	8/30/97
Pers/Bus/Rep Svc	Bioreliance	15.000	36,000,000	37,000,000	7/28/97
Pers/Bus/Rep Svc	Boron LePore & Associates	17.500	63,000,000	111,800,000	9/23/97
Pers/Bus/Rep Svc	Coast Dental Services	8.000	17,600,000	45,800,000	2/10/97
Pers/Bus/Rep Svc	Cognicase	12.500	38,500,000	160,400,000	10/2/97
Pers/Bus/Rep Svc	Complete Business Solutions	12.000	30,000,000	111,600,000	3/5/97
Pers/Bus/Rep Svc	CrossKeys Systems	10.500	30,500,000	30,400,000	12/16/97
Pers/Bus/Rep Svc	Crystal Systems Solutions	7.500	22,500,000	78,800,000	1/31/97
Pers/Bus/Rep Svc	DAQU Systems	9.000	16,000,000	92,400,000	2/12/97
Pers/Bus/Rep Svc	Deitek Systems	11.000	31,900,000	185,500,000	2/25/97
Pers/Bus/Rep Svc	Dental Care Alliance	12.000	24,000,000	74,900,000	11/4/97
Pers/Bus/Rep Svc	DIOAX	5.168	10,400,000	16,800,000	9/24/97
Pers/Bus/Rep Svc	e-NET	5.000	7,500,000	28,800,000	4/7/97
Pers/Bus/Rep Svc	EarthLink Network	13.000	26,000,000	104,300,000	1/21/97
Pers/Bus/Rep Svc	FlexInternational Software	11.000	33,000,000	92,500,000	12/12/97
Pers/Bus/Rep Svc	Freepages Group	15.390	77,000,000	5,988,700,000	3/3/97
Pers/Bus/Rep Svc	Geno Logic	8.000	24,000,000	30,800,000	11/21/97
Pers/Bus/Rep Svc	Genesys Telecommun Labs	18.000	45,000,000	346,100,000	6/17/97

Source: Securities Data Co., Inc. (973) 622-3100 and Disclosure.

Excludes closed-end funds.

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Investment Banking Firms (Managers)	Co-Managers	Legal Counsel (Company)	Auditor
Deutsche Morgan Grenfell	Montgomery Securities Piper, Jaffray Inc.	Van Valkenberg Furber Law Group P.L.L.C.	Price Waterhouse
H. C. Wainwright & Co.		Koemer, Silberman & Weiner LP	Coopers & Lybrand
Morgan Stanley Dean Witter Merrill Lynch & Co.	Alex. Brown & Sons Hambrecht & Quist Morgan Stanley Dean Witter	Forwick & West	Ernst & Young
Goldman, Sachs & Co.	Alex. Brown & Sons Robertson Stephens Soundview Financial Group, Inc.	Morrison & Foerster	Ernst & Young
Hambrecht & Quist	William Blair	Hale, Dorr	Arthur Andersen & Company
Morgan Stanley Dean Witter	Hambrecht & Quist	Fried, Frank, Harris, Shriver & Jacobson	Price Waterhouse
Bear, Stearns	Smith Barney Inc. Wessels, Arnold & Henderson	Goodwin, Procter & Hoar	Arthur Andersen & Company
Prudential Securities	Raymond James & Associates	Shumaker, Loop & Kendrick	Deloitte & Touche
Volpe Brown Whelan & Co.	First Albany Marleau, Lemire Securities Inc.	Goodwin, Procter & Hoar	Raymond Chabot Grant
Dorlandson, Lufkin & Jennette	Ferns, Baker Watts	Gamby Karimsky & Stein LLP	Arthur Andersen & Company
Cowen	SBC Warburg Dillon Read CIBC Oppenheimer RBC Dominion Securities (US)	Skadden, Arps, Slate, Meagher & Flom	
Hampshire Securities		Fulbright & Jaworski	Shlomo, Ziv & Co.
Alex. Brown & Sons	Cowen • Hambrecht & Quist	Baker & McKenzie	Ernst & Young
Montgomery Securities	William Blair	Gray Cary Ware & Freidenrich	Arthur Andersen & Company
Raymond James & Associates	William Blair	Greenberg, Traurig, Hoffman, Lipoff, Rosen & Quentel	Price Waterhouse
Baron Chase Securities		Berman Wolfe & Reinert	
Baron Chase Securities		Individual Lawyer	Grant Thornton
Invened Associates		Huntton & Williams	Price Waterhouse
BT Alex. Brown	Hambrecht & Quist Wessels, Arnold & Henderson	Hale, Dorr	Price Waterhouse
Morgan Stanley	Cowen	Weil Gotshal & Manges	KPMG Post Marwick
BancAmerica Robertson Stephens	Hambrecht & Quist UBS Securities	Coolay Godward LLP	Arthur Andersen & Company
Goldman, Sachs & Co.	Lehman Brothers Robertson Stephens	Brobeck, Phleger, Harrison	Arthur Andersen & Company

Industry	Company	Offering Price	Total \$ Value Of Offering	Market Value At Time Of Offering	Offering Date
Pers/Bus/Rep Svc	Great Plains Software	16.000	48,000,000	204,300,000	6/19/97
Pers/Bus/Rep Svc	Hagler Bailly	14.000	44,100,000	111,800,000	7/3/97
Pers/Bus/Rep Svc	Hall Kinion & Associates	15.000	37,700,000	121,000,000	8/4/97
Pers/Bus/Rep Svc	Healthcare Recoveries	14.000	137,200,000	137,200,000	5/21/97
Pers/Bus/Rep Svc	Healthdesk(R)	5.000	8,500,000	28,900,000	1/17/97
Pers/Bus/Rep Svc	HealthWorld	9.000	18,900,000	63,900,000	11/21/97
Pers/Bus/Rep Svc	HTE	11.000	27,500,000	81,000,000	6/10/97
Pers/Bus/Rep Svc	IAT Multimedia	6.000	20,100,000	48,300,000	3/26/97
Pers/Bus/Rep Svc	ILOO	11.000	27,500,000	120,000,000	2/14/97
Pers/Bus/Rep Svc	ImageMAX	12.000	37,200,000	45,700,000	12/3/97
Pers/Bus/Rep Svc	Information Advantage Software	6.000	20,000,000	89,700,000	12/17/97
Pers/Bus/Rep Svc	Information Management Assoc	13.000	50,700,000	119,600,000	7/30/97
Pers/Bus/Rep Svc	INSpire Insurance Solutions	12.000	66,000,000	117,300,000	8/22/97
Pers/Bus/Rep Svc	International Computax	9.500	10,700,000	30,600,000	4/29/97
Pers/Bus/Rep Svc	InterVU	9.500	19,000,000	87,100,000	11/19/97
Pers/Bus/Rep Svc	IONA Technologies	18.000	137,600,000	329,200,000	2/25/97
Pers/Bus/Rep Svc	JD Edwards	23.000	383,400,000	2,108,800,000	9/23/97
Pers/Bus/Rep Svc	Judge Group	7.500	27,400,000	100,100,000	2/14/97
Pers/Bus/Rep Svc	Kendle International	14.000	50,400,000	135,100,000	8/22/97
Pers/Bus/Rep Svc	Kofax Image Products	11.000	22,000,000	28,900,000	10/10/97
Pers/Bus/Rep Svc	Lamelle Associates	12.000	24,000,000	60,900,000	7/1/97

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Investment Banking Firms (Managers)	Co-Managers	Legal Counsel (Company)	Auditor
Goldman, Sachs & Co.	Hambrecht & Quist Piper, Jaffrey Inc	Dorsey & Whitney	Price Waterhouse
Donaldson, Lufkin & Jenrette	Montgomery Securities	Pepper, Hamilton & Scheetz	Ernst & Young
Montgomery Securities	Robert W. Baird & Co Robinson-Humphrey	Gundersen Dettmer Stough Villeneuve	Deloitte & Touche Franklin & Hachi
Bear, Stearns	Donaldson, Lufkin & Jenrette Robinson-Humphrey	King Spalding	Coopers & Lybrand
Whele Securities		Gray Cary Ware & Feldmanrich	Coopers & Lybrand
C. E. Unterberg, Towbin	Pennsylvania Merchant Group	Rosenman Collin Freund Lewis & Cohen	Arthur Andersen & Company
Volpe, Welby & Company	Janney Montgomery Scott	Greenberg, Traurig, Hoffman, Lipoff, Rosen & Oventel	Arthur Andersen & Company
Royce Investments	Continental Broker-Dealer Corp	Baker & McKenzie	Rotstein, Kass & Co
Cowen	Soundview Financial Group, Inc.	Wilson, Sonsini, Goodrich & Rosati	Ernst & Young
William Blair	Janney Montgomery Scott	Pepper, Hamilton & Scheetz	Arthur Andersen & Company
BancAmerica Robertson Stephens	NationsBanc Montgomery Sec Piper, Jaffrey Inc. First Albany	Gundersen Dettmer Stough Villeneuve Franklin & Hachi	Price Waterhouse
Alex. Brown & Sons	Robertson Stephens Soundview Financial Group, Inc.	LeBeauf, Lamb, Leiby & MacRae	Arthur Andersen & Company
Raymond James & Associates	Southwest Securities	Akin, Gump, Strauss, Hauer & Feld	Deloitte & Touche
H. J. Meyers		Gambrell & Stolz, L.L.P.	Habif, Avogetti & Wurne PC
Josephthal Lyon & Ross, Inc.	Crutenden Roth Inc.	Latham & Watkins	Ernst & Young
Lehman Brothers	Robertson Stephens Soundview Financial Group, Inc.	Testa Hurwitz Thibault	Ernst & Young
Morgan Stanley Dean Witter	Deutsche Morgan Grenfell Robertson Stephens	Wilson, Sonsini, Goodrich & Rosati	Price Waterhouse
Janney Montgomery Scott	Unterberg Harris	Drinker Biddle & Reath	Rudolph, Palitz
Lehman Brothers	J.C. Bradford	Keating, Muething & Kiekamp	Coopers & Lybrand
Needham	Unterberg Harris	Stradling, Yocca, Carlson & Rauth	Deloitte & Touche
Robert W. Baird & Co	William Blair	Trenam, Kamker, Scharf	Arthur Andersen & Company

Industry	Company	Offering Price	Total \$ Value Of Offering	Market Value At Time Of Offering	Offering Date
Pers/Bus/Rep Svc	Landmark Systems	7.000	22,400,000	65,700,000	11/17/97
Pers/Bus/Rep Svc	LHS Group	16.000	76,800,000	64,500,000	5/15/97
Pers/Bus/Rep Svc	Logility	14.500	31,900,000	195,800,000	10/7/97
Pers/Bus/Rep Svc	Made2Manage Systems	7.500	17,400,000	20,400,000	12/18/97
Pers/Bus/Rep Svc	Medical Manager	11.000	66,000,000	194,800,000	1/30/97
Pers/Bus/Rep Svc	Medtrisk	11.000	25,300,000	68,500,000	1/28/97
Pers/Bus/Rep Svc	MER Telemanagement Solutions	6.000	7,200,000	26,800,000	5/21/97
Pers/Bus/Rep Svc	Metro Information Services	16.000	48,600,000	177,100,000	1/29/97
Pers/Bus/Rep Svc	MPW Industrial Services Group	9.000	33,800,000	90,200,000	12/2/97
Pers/Bus/Rep Svc	NPK	19.000	63,900,000	219,200,000	10/17/97
Pers/Bus/Rep Svc	National Research	15.000	31,500,000	109,600,000	10/10/97
Pers/Bus/Rep Svc	NetSpeak	8.750	21,000,000	92,300,000	5/29/97
Pers/Bus/Rep Svc	Network Solutions	18.000	58,400,000	275,400,000	9/26/97
Pers/Bus/Rep Svc	New Era of Networks	12.000	33,100,000	177,300,000	6/18/97
Pers/Bus/Rep Svc	Omega Research	11.000	40,700,000	242,900,000	9/30/97
Pers/Bus/Rep Svc	Omtod	9.000	36,000,000	102,900,000	8/8/97
Pers/Bus/Rep Svc	OptiSystems Solutions	7.500	15,000,000	45,000,000	6/12/97
Pers/Bus/Rep Svc	OrthAlliance	12.000	31,200,000	122,600,000	8/21/97
Pers/Bus/Rep Svc	OutSource International	15.000	55,500,000	126,700,000	10/24/97
Pers/Bus/Rep Svc	Peapod	16.000	64,000,000	285,900,000	6/10/97

Source: Securities Data Co., Inc. (973) 622-3100 and Disclosure.

Excludes closed-end funds.

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Investment Banking Firms (Managers)	Co-Managers	Legal Counsel (Company)	Auditor
		Barkla, Frye, O'Neill	
C. E. Unterberg, Towbin	Wheat First Butcher & Singer	Shaw, Pittman, Potts & Trowbridge	Price Waterhouse
Goldman, Sachs & Co.	Cowen Robertson Stephens	Alston & Bird	Ernst & Young
National Banc Montgomery Sec	Cowen Interstate/Johnson Lane Hampshire Securities	Gantrell & Stoltz, L.L.P.	KPMG Peat Marwick
First Albany	Van Kester RVR Securities Corp.	Ice Miller Donadio & Ryan	Coopers & Lybrand
Donaldson, Lufkin & Jenrette	Dean Witter Reynolds	Morgan, Lewis & Bockius	Coopers & Lybrand
Equitable Securities	Jeffries & Co., Inc.	Alston & Bird	KPMG Peat Marwick
Hampshire Securities		Carter, Ledyard & Milburn	Kost Levary & Forer
Robert W. Baird & Co.	J.C. Bradford Robinson-Humphrey	Clark & Stuart	KPMG Peat Marwick
Raymond James & Associates	Robert W. Baird & Co.	Jones Day Reavis & Pogue	Ernst & Young
PaineWebber	Unterberg Harris	Dewey Ballantine	Arthur Andersen & Company
William Blair	Robert W. Baird & Co.	Foley & Lardner	KPMG Peat Marwick
Josephthal Lyon & Ross, Inc.	Cruftenden Roth Inc.	Broad & Cassel	Deloitte & Touche
Hambrecht & Quist	JP Morgan & Co. Inc. PaineWebber	Pillsbury, Madison & Suto	Price Waterhouse
UBS Securities	Cowen	Wilson, Sonsini, Goodrich & Rosati	Arthur Andersen & Company
Robertson Stephens	Lehman Brothers Hambrecht & Quist	Rubin, Baum, Levin, Constant, Friedman & Bizin	Arthur Andersen & Company
Robertson Stephens	Montgomery Securities First Albany	Testa Hurwitz Thibault	Arthur Andersen & Company
National Securities		Kaye, Scholer, Fierman, Hayes & Handler	Deloitte & Touche
J.C. Bradford	Oppenheimer	Nelson, Mullins, Riley & Scarborough	Arthur Andersen & Company
Smith Barney Inc.	Robert W. Baird & Co. Donaldson, Lufkin & Jenrette	Holland & Knight	Deloitte & Touche
Smith Barney Inc.	William Blair JP Morgan & Co. Inc.	Sidley & Austin	KPMG Peat Marwick

Industry	Company	Offering Price	Total \$ Value Of Offering	Market Value At Time Of Offering	Offering Date
Pers/Bus/Rep Svc	Pegasus Systems	13.000	45,500,000	128,000,000	6/8/97
Pers/Bus/Rep Svc	Peregrine Systems	9.000	20,700,000	136,800,000	4/8/97
Pers/Bus/Rep Svc	Peritus Software Services	16.000	56,000,000	249,300,000	7/2/97
Pers/Bus/Rep Svc	Pervasive Software	10.000	40,000,000	131,000,000	9/25/97
Pers/Bus/Rep Svc	Precision Auto Care	9.000	22,000,000	48,000,000	11/6/97
Pers/Bus/Rep Svc	Premier Research Worldwide	17.000	48,800,000	101,700,000	2/3/97
Pers/Bus/Rep Svc	ProBusiness Services	11.000	27,500,000	44,300,000	9/19/97
Pers/Bus/Rep Svc	PRT Group	13.000	59,800,000	188,800,000	11/20/97
Pers/Bus/Rep Svc	PSW Technologies	9.000	25,700,000	75,600,000	6/5/97
Pers/Bus/Rep Svc	QAD	15.000	86,300,000	120,000,000	9/6/97
Pers/Bus/Rep Svc	Qualix Group	8.000	24,000,000	56,400,000	2/12/97
Pers/Bus/Rep Svc	Radiant Systems	9.500	27,600,000	131,300,000	2/12/97
Pers/Bus/Rep Svc	RealNetworks	12.500	37,500,000	56,800,000	11/21/97
Pers/Bus/Rep Svc	Robocom Systems	6.500	9,800,000	22,300,000	6/26/97
Pers/Bus/Rep Svc	RWD Technologies	13.000	39,000,000	179,500,000	6/19/97
Pers/Bus/Rep Svc	SportsLine USA	8.000	28,000,000	62,700,000	11/13/97
Pers/Bus/Rep Svc	SPR	16.000	41,600,000	129,100,000	10/1/97
Pers/Bus/Rep Svc	Staff Leasing	17.000	68,000,000	385,800,000	6/25/97
Pers/Bus/Rep Svc	Symtel	11.000	33,000,000	275,000,000	8/12/97

Source: Securities Data Co., Inc. (973) 622-3100 and Disclosure.

Excludes closed-end funds.

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Investment Banking Firms (Managers)	Co-Managers	Legal Counsel (Company)	Auditor
Hambrecht & Quist	Montgomery Securities Volpe Brown Whelan & Co	Lodge, Purnell, Rain, Hannell	Price Waterhouse
UBS Securities	Oppenheimer	Wilson, Sonsini, Goodrich & Rosati	Arthur Andersen & Company
Montgomery Securities	Wessels, Arnold & Henderson H. C. Wainwright & Co.	Hale, Dorr	Price Waterhouse
Robertson Stephens	UBS Securities First Albany	Gundersen Dettmer Stough Villeneuve *	Ernst & Young Franklin & Hachi
A. G. Edwards & Sons	Feris, Baker Watts	Miles & Stockbridge	Ernst & Young
Montgomery Securities	Furman Satz Magel Dietz Birney Genesis Merchant Group Secs	Archer & Greiner	Arthur Andersen & Company
Robertson Stephens	William Blair	Wilson, Sonsini, Goodrich & Rosati	Ernst & Young
Smith Barney Inc.	Donaldson, Lufkin & Jenrette UBS Securities Punk, Ziegel & Knoll	Skadden, Arns, Slate, Meagher & Flom	Ernst & Young
Alex. Brown & Sons	JP Morgan & Co. Inc.	Brotschek, Phlegier, Harrison	Ernst & Young
Smith Barney Inc.	Cowen Robertson Stephens Smith Barney Inc.	Mitbank, Tweed, Hadley & McCloy	KPMG Peat Marwick
Hambrecht & Quist	Smith Barney Inc.	Gundersen Dettmer Stough Villeneuve Franklin & Hachi	Deloitte & Touche
Alex. Brown & Sons	Deutsche Morgan Grenfell Robinson-Humphrey	Smith, Gambrell & Russell	Arthur Anderson & Company
Goldman, Sachs & Co.	BancAmerica Robertson Stephens NationsBanc Montgomery Sec	Graham & James	KPMG Peat Marwick
Bluestone Capital Partners LP	Coleman & Company Oscar Gruss & Son Inc.	Pryor, Cashman, Sherman & Flynn	Ernst & Young
William Blair	Montgomery Securities	Piper & Marbury	Arthur Andersen & Company
BancAmerica Robertson Stephens	Cowen NationsBanc Montgomery Sec	Greenberg, Trautig, Lipoff Rosen, Hoffman & Quentel	Arthur Andersen & Company
Smith Barney Inc.	Robert W. Baird & Co.	Wildman, Harrold, Allen, Dixon & McDonnell	Arthur Andersen & Company
Lahman Brothers	Donaldson, Lufkin & Jenrette Montgomery Securities	Powell, Goldstein, Frazier & Murphy	Deloitte & Touche
Hambrecht & Quist	Prudential Securities Robertson Stephens	Dykema, Gossett, Spencer, Goodnow & Trigg	Coopers & Lybrand

Industry	Company	Offering Price	Total \$ Value Of Offering	Market Value At Time Of Offering	Offering Date
Pers/Bus/Rep Svc	Syecom International	5.000	5,300,000	22,100,000	5/17/97
Pers/Bus/Rep Svc	Take-Two Interactive Software	5.000	8,000,000	38,000,000	4/14/97
Pers/Bus/Rep Svc	Telgraf	6.000	12,600,000	32,600,000	11/10/97
Pers/Bus/Rep Svc	Template Software	10.000	33,600,000	90,000,000	1/28/97
Pers/Bus/Rep Svc	Tier Technologies	8.500	26,900,000	70,900,000	12/17/97
Pers/Bus/Rep Svc	Trendwest Resorts	18.000	51,800,000	215,400,000	8/14/97
Pers/Bus/Rep Svc	Trimerts	12.000	33,000,000	46,100,000	10/7/97
Pers/Bus/Rep Svc	TSI International Software	9.000	36,000,000	81,500,000	7/1/97
Pers/Bus/Rep Svc	UBICS	10.000	20,000,000	65,000,000	10/30/97
Pers/Bus/Rep Svc	USWeb	7.500	37,500,000	134,600,000	12/6/97
Pers/Bus/Rep Svc	Vestcom International	13.000	50,100,000	101,000,000	7/30/97
Pers/Bus/Rep Svc	Vision Twenty One	10.000	21,000,000	81,800,000	8/18/97
Radio/TV/Telecom	#Entertainment	21.000	199,500,000	587,400,000	7/30/97
Radio/TV/Telecom	Electric Lightwave	16.000	128,000,000	786,600,000	11/24/97
Radio/TV/Telecom	Gilat Communications	8.500	21,300,000	78,000,000	12/4/97
Radio/TV/Telecom	Innova	13.000	36,800,000	161,100,000	8/8/97
Radio/TV/Telecom	Indium World Communications	20.000	240,000,000	264,000,000	6/9/97
Radio/TV/Telecom	Metalink Worldwide Inc	9.000	16,000,000	45,400,000	1/29/97
Radio/TV/Telecom	MetroNet Communications	16.230	121,700,000	377,700,000	12/3/97
Radio/TV/Telecom	Microcell Telecommunications	10.825	160,400,000	504,200,000	10/7/97

Source: Securities Data Co., Inc. (973) 622-3100 and Disclosure.

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Investment Banking Firms (Managers)	Co-Managers	Legal Counsel (Company)	Auditor
Commonwealth Associates		Ruskin, Moscov, Evans & Faltschek	Albrecht Viggiano Zureck & Co.
Whele Securities		Greenberg, Truong, Hoffman, Lipoff, Rosen & Quentel	Coopers & Lybrand
D. H. Blair Investment Banking		Bachner, Tally, Polevoy & Misher	Coopers & Lybrand
Volpe, Wally & Company	Piper, Jeffrey Inc.	Huntton & Williams	Coopers & Lybrand
Adams, Harkness & Hill	NationsBanc Montgomery Sec	Farella, Braun, & Martel	Ernst & Young
Montgomery Securities	Salomon Brothers	Foster Pepper & Shafelman	KPMG Peat Marwick
UBS Securities	NationsBanc Montgomery Sec	Hutchison & Mason	KPMG Peat Marwick
BancAmerica Robertson Stephens	Soundview Financial Group, Inc. Wessels, Arnold & Henderson	Fenwick & West	KPMG Peat Marwick
Park/Hunter	Scott & Stringfellow	Cohen & Gingsby	Arthur Andersen & Company
Hambrecht & Quist	Donaldson, Lufkin & Jenrette Wessels, Arnold & Henderson First Albany	Wilson, Sonsini, Goodrich & Rosati	Pricewaterhouse
Oppenheimer	Prudential Securities	Lowenstein, Sandler, Kohl, Fisher & Boylan	
Prudential Securities	Wheat First Butcher & Singer	Shumaker, Loop & Kendrick	Ernst & Young
Goldman, Sachs & Co.	Merrill Lynch & Co.	Baker & McKenzie	KPMG Peat Marwick
Lehman Brothers	Merrill Lynch & Co. Morgan Stanley Dean Witter Deutsche Morgan Grenfell	Winthrop, Stimson, Putnam & Roberts	KPMG Peat Marwick
CIBC Oppenheimer	Lehman Brothers Salomon Smith Barney	Skadden, Arps, Slate, Meagher & Flom	Kesselman & Kesselman
UBS Securities	Hambrecht & Quist Wessels, Arnold & Henderson	Graham & James	KPMG Peat Marwick
Merrill Lynch & Co.	Donaldson, Lufkin & Jenrette Goldman, Sachs & Co.	Sullivan & Cromwell	KPMG Peat Marwick
Dean Witter Reynolds	Wheat, First Securities	Tashlik, Kreitzer & Goldwyn P.C.	KPMG Peat Marwick
Salomon Smith Barney RBC Dominion Securities	Bear, Stearns Goldman, Sachs & Co. TD Securities Inc.	Oster, Hoskin & Harcourt	KPMG Peat Marwick
Merrill Lynch & Co. Nesbitt Burns Securities	Bear, Stearns Donaldson, Lufkin & Jenrette Goldman, Sachs & Co.	Winthrop, Stimson, Putnam & Roberts	

Industry	Company	Offering Price	Total \$ Value Of Offering	Market Value At Time Of Offering	Offering Date
Radio/TV/Telecom	Sky Network Television	14.370	81,200,000	\$10,800,000	12/8/97
Radio/TV/Telecom	Teligent	21.500	118,300,000	1,231,000,000	11/21/97
Real Estate	Saxton	8.250	18,800,000	62,900,000	6/24/97
Real Estate	Vistana	12.000	66,600,000	225,600,000	2/27/97
REIT	Captec Net Lease Realty	18.000	144,000,000	181,800,000	11/13/97
REIT	Green Asset Investment	16.000	240,000,000	270,000,000	5/14/97
Restaurant/Hotel	BridgeStreet Accommodations	9.000	23,500,000	64,600,000	9/24/97
Restaurant/Hotel	ExecuStay	10.000	26,500,000	64,000,000	8/27/97
Restaurant/Hotel	Friendly Ice Cream	18.000	90,000,000	90,000,000	11/14/97
Restaurant/Hotel	Il Fornello Corp	11.000	16,500,000	29,400,000	9/18/97
Restaurant/Hotel	Star Buffet	12.000	36,000,000	64,800,000	9/24/97
Restaurant/Hotel	Total Entertainment Restaurant	9.000	18,900,000	90,900,000	7/17/97
Retail	Barbeques Galore	11.000	18,700,000	36,900,000	11/7/97
Retail	Big Dog Holdings	14.000	56,000,000	181,400,000	9/25/97
Retail	Children's Place Retail Store	14.000	56,000,000	235,300,000	9/18/97
Retail	Coldwater Creek	15.000	37,500,000	148,200,000	1/28/97
Retail	Guitar Center	15.000	101,500,000	155,600,000	3/13/97
Retail	Holt's Cigar Holdings	11.000	19,300,000	63,500,000	11/24/97
Retail	Kids Stuff	6.000	3,600,000	28,800,000	6/27/97

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Investment Banking Firms (Managers)	Co-Managers	Legal Counsel (Company)	Auditor
Goldman, Sachs & Co.	Goldman, Sachs & Co.	Sullivan & Cromwell	Price Waterhouse
Merrill Lynch & Co. Salomon Brothers	Bear, Stearns Goldman, Sachs & Co.	Skadden, Arps, Slate, Meagher & Flom	Ernst & Young
Ladenburg, Thalmann	Stifel, Nicolaus	Hughes Hubbard & Reed	KPMG Peat Marwick
Montgomery Securities	Smith Barney Inc.	Neal, Gerber & Eisenberg	KPMG Peat Marwick
CS First Boston	Bear, Stearns Prudential Securities McDonald & Company Securities Piper, Jaffray Inc.	Riker & Hostetter	Coopers & Lybrand
Friedman, Billings, Ramsey & Co	EVEREN Securities	Hunton & Williams	Price Waterhouse
Legg Mason Wood Walker	McDonald & Company Securities	Nutter, McCIennen & Fish	Arthur Andersen & Company
A. G. Edwards & Sons	Equitable Securities	Dorsey & Whitney	Grant Thornton
NationsBanc Montgomery Sec	Piper, Jaffray Inc Tucker Anthony	Cheate, Hall & Stewart	Arthur Andersen & Company
Montgomery Securities	BT Alex. Brown	Coolley, Godward, Castro, Huddleson & Tatum	Deloitte & Touche
Equitable Securities	EVEREN Securities Cruttsenden Roth Inc.	Stradling, Voora, Carlson & Rauth	KPMG Peat Marwick
Montgomery Securities		Olshan Grundman Frome & Rosenzweig	Ernst & Young
JP Morgan & Co. Inc.	SBC Warburg Dillon Read	Brobeck, Phleger, Harrison	Horwath Sydney Partnership
Robertson Stephens	Harrbrecht & Quist Needham	Kimball & Weiner LLP	Deloitte & Touche
NationsBanc Montgomery Sec	Donaldson, Lufkin & Jervette Smith Barney Inc. Legg Mason Wood Walker Montgomery Securities	Stroock & Stroock & Lavan	Arthur Andersen & Company
Montgomery Securities	William Blair	Brobeck, Phleger, Harrison	Arthur Andersen & Company
Goldman, Sachs & Co.	Donaldson, Lufkin & Jervette Montgomery Securities Chase Securities Dain Bosworth	Latham & Watkins	KPMG Peat Marwick
Prudential Securities	Janney Montgomery Scott	Fox, Rothschild, O'Brien & Fentel	Price Waterhouse
VTR Capital, Inc.		Hornoby, Secher, Zelman & Stanton P.A.	Hausser & Taylor

Industry	Company	Offering Price	Total \$ Value Of Offering	Market Value At Time Of Offering	Offering Date
Retail	Let's Talk Cellular & Wireless	12.000	28,000,000	97,100,000	11/24/97
Retail	ONSALE	6.000	15,000,000	88,100,000	4/17/97
Retail	Paper Warehouse	7.500	13,300,000	29,900,000	11/24/97
Retail	Track 'n Trail	10.500	28,600,000	71,800,000	10/10/97
Retail	US Vision	9.000	22,500,000	45,000,000	12/1/97
S&L/Thrift	Empire Federal Bancorp, Inc.	10.000	25,920,000	25,900,000	1/27/97
S&L/Thrift	First Security Fed Financial, Inc.	10.000	64,080,000	41,100,000	10/31/97
S&L/Thrift	First Bank Corp.	10.000	198,375,000	12,700,000	7/2/97
S&L/Thrift	First Spartan Financial Corp.	20.000	56,950,000	56,900,000	7/19/97
S&L/Thrift	Flagstar Bancorp	13.000	65,000,000	174,800,000	4/30/97
S&L/Thrift	Greater Community Bancorp	25.000	20,000,000	47,100,000	9/20/97
S&L/Thrift	GSB Financial Corporation	10.000	1,445,000	14,400,000	7/9/97
S&L/Thrift	Hamilton Bancorp	15.500	37,200,000	146,800,000	3/25/97
S&L/Thrift	Life Financial, CA	11.000	31,800,000	67,200,000	6/24/97
S&L/Thrift	NewSouth Bancorp, Inc.	15.000	43,642,500	43,800,000	4/8/97
S&L/Thrift	Oregon Trail Financial Corporation	10.000	46,948,750	30,100,000	10/6/97
S&L/Thrift	Peoples Home Savings Bank	10.000	12,420,000	12,400,000	7/1/97
S&L/Thrift	Peoples-Sidney Financial Corporation	10.000	55,000,000	132,700,000	4/28/97
S&L/Thrift	Roxlyn Bancorp, Inc.	10.000	436,424,590	438,400,000	1/31/97
S&L/Thrift	Warwick Community Bancorp	10.000	64,141,250	64,100,000	12/23/97
Sanitation	Casella Waste Management	18.000	72,000,000	174,200,000	10/28/97
Sanitation	Waste Industries	13.500	29,000,000	151,300,000	6/13/97
Telephone Commun	Bell Canada International	16.300	293,400,000	1,017,600,000	9/29/97

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Excludes closed-end funds.

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Investment Banking Firms (Managers)	Co-Managers	Legal Counsel (Company)	Auditor
Merrill Lynch & Co.	Salomon Brothers	Greenberg, Traurig, Hoffman, Lipoff, Rosen & Quantel	Ernst & Young
Montgomery Securities	Alex. Brown & Sons	Fernwick & West	Price Waterhouse
Dain Bosworth		Mason Edelman Borman & Brand	KPMG Peat Marwick
BT Alex. Brown	A. G. Edwards & Sons Ladenburg, Thalmann	Pillsbury, Madison & Sutro	Coopers & Lybrand
Salomon Smith Barney	Janney Montgomery Scott	Sayles Lijdi & Casterline	Ernst & Young
Charles Webb & Company		Breyer & Aguggia	KPMG Peat Marwick
Friedman, Billings, Ramsey & Co.		Silver, Freedman & Taff, LLP	Crowe, Chizek & Company
Sandler O'Neill & Partners, LLP		Breyer & Aguggia	BDO Seidman, LLP
Trident Securities, Inc.		Breyer & Aguggia	Deloitte & Touche LLP
Lehman brothers	PaineWebber • Roney & Co.	Reinhart, Boerner, Van Duren, Norris	Grant Thornton
Advest, Inc.		Maliza, Spick, Sloane, Flach, P.C.	Grant Thornton
Capital Resources, Inc.		Serchuk & Zelemeyer	Nugent & Haussler, P.C.
Oppenheimer	NatWest Securities	Greenberg, Traurig, Hoffman, Lipoff, Rosen & Quantel	Deloitte & Touche
Keefe, Bruyette & Woods		Muldoon, Murphy & Faucette	Price Waterhouse
Trident Securities		Housley Goldberg, Kantarian & Bronstein, PC.	Coopers & Lybrand
Charles Webb & Company		Breyer & Aguggia	Deloitte & Touche
Capital Resource, Inc.		Maliza, Spick, Sloane, Flach, P.C.	Snodgrass
Charles Webb & Company		Silver, Freedman & Taff	Crowe, Chizek & Company
Sandler O'Neill & Partners, L.P.		Muldoon, Murphy & Faucette	KPMG Peat Marwick, LLP
Sandler O'Neill & Partners, L.P.		Thacher Proffitt & Wood	Arthur Andersen & Company
Goldman, Sachs & Co.	Donaldson, Lufkin & Jenrette Oppenheimer	Hale, Dorr	Arthur Andersen & Company
Alex. Brown & Sons	Deutsche Morgan Grenfell	Wylick, Robbins, Yates & Ponton	Deloitte & Touche
Goldman, Sachs & Co.	Nesbitt Burns Inc. RBC Dominion Securities CS First Boston Midland Walwyn CIBC Wood Gundy Securities Scotia Capital Markets (USA) TD Securities Inc. JP Morgan & Co. Inc. Nesbitt Burns Inc.	Davis Polk & Wardwell	

Industry	Company	Offering Price	Total \$ Value Of Offering	Market Value At Time Of Offering	Offering Date
Telephone Commun	Concentric Network	12.000	51,600,000	66,300,000	8/1/97
Telephone Commun	Energis	23.880	358,400,000	5,043,700,000	12/6/97
Telephone Commun	Esprit Telecom Group	12.000	57,000,000	205,800,000	2/27/97
Telephone Commun	Ionica Group	19.570	260,900,000	2,485,200,000	7/18/97
Telephone Commun	ITC Deltacom	16.500	82,500,000	398,100,000	10/23/97
Telephone Commun	Metromedia Fiber Network	16.000	126,700,000	279,800,000	10/26/97
Telephone Commun	NACT Telecommunications	10.000	30,000,000	61,100,000	2/26/97
Telephone Commun	NextLink Communications	17.000	258,400,000	821,800,000	9/26/97
Telephone Commun	Qwest Communications	22.000	297,000,000	2,200,000,000	6/23/97
Telephone Commun	RSL Communications	22.000	158,400,000	173,000,000	9/30/97
Telephone Commun	Star Telecommunications	9.000	36,000,000	132,000,000	6/12/97
Telephone Commun	Startec Global Communications	12.000	34,200,000	66,600,000	10/9/97
Telephone Commun	Telegroup	10.000	40,000,000	302,100,000	7/8/97
Transportation	Aramex International Limited	7.000	7,000,000	26,900,000	1/13/97
Transportation	Carey International	10.500	30,500,000	37,300,000	5/27/97
Transportation	CH Robinson Worldwide	18.000	190,400,000	742,800,000	10/15/97
Transportation	Fine Air Services	14.500	123,300,000	294,500,000	8/6/97

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Investment Banking Firms (Managers)	Co-Managers	Legal Counsel (Company)	Auditor
UBS Securities	Unterberg Harris Wheat First Butcher & Singer	Wilson, Sonstini, Goodrich & Rosati	Ernst & Young
Dresdner Kleinwort Benson	Salomon Smith Barney UBS Securities	Sullivan & Cromwell	Coopers & Lybrand
Lehman Brothers	Donaldson, Lufkin & Jenrette HSBC Securities	Shearman & Sterling	Price Waterhouse
SBC Warburg	Donaldson, Lufkin & Jenrette JP Morgan & Co. Inc. ADN AMRO Chicago Corp SBC Warburg	Latham & Watkins	Arthur Andersen & Company
Morgan Stanley Dean Witter	Merrill Lynch & Co. J.C. Bradford Wheat First Butcher & Singer	Hogan & Hartson	Arthur Andersen & Company
Salomon Brothers	Deutsche Morgan Grenfell Donaldson, Lufkin & Jenrette	Paul, Weiss, Rikkind, Wharton & Garrison	Ernst & Young
Hambrecht & Quist	Montgomery Securities	Olshan Grandman Frome Rosenzweig	KPMG Peat Marwick
Salomon Brothers	Merrill Lynch & Co. Bear, Stearns Lazard Freres	Willkie Farr & Gallagher	Arthur Andersen & Company
Salomon Brothers	Donaldson, Lufkin & Jenrette Goldman, Sachs & Co. Merrill Lynch & Co. Salomon Brothers	Holmes, Roberts & Owen	KPMG Peat Marwick
Goldman, Sachs & Co.	Merrill Lynch & Co. Morgan Stanley Dean Witter SBC Warburg Dillon Read	Rosenman & Colin	Deloitte & Touche
Hambrecht & Quist	Alex. Brown & Sons	Gundersen Dettmer Stough Villeneuve Franklin & Huchli	Arthur Andersen & Company
Ferns, Baker Watts	Boenning & Scattergood	Shulman, Rogers, Gandal, Porty & Ecker	Arthur Andersen & Company
Smith Barney Inc.	Alex. Brown & Sons Cowen	Swidtor & Berlin	KPMG Peat Marwick
Commonwealth Associates		Orrick, Herrington & Sutcliffe	Arthur Andersen & Company
Montgomery Securities	Ladenburg, Thalmann	Nutter, Mockenham & Fish	Coopers & Lybrand
BT Alex. Brown	Morgan Stanley Dean Witter Piper, Jaffray Inc	Dorsey & Whitney	Arthur Andersen & Company
Alex. Brown & Sons	Bear, Stearns Dillon, Read	Greenberg, Traurig, Hoffman, Lipoff, Rosen & Quentel	Coopers & Lybrand

Industry	Company	Offering Price	Total \$ Value Of Offering	Market Value At Time Of Offering	Offering Date
Transportation	International Total Services	11,250	31,800,000	70,300,000	9/19/97
Transportation	Jervis Transportation	15,000	57,000,000	159,900,000	10/7/97
Transportation	Knightbridge Tankers	20,000	290,000,000	300,000,000	2/8/97
Transportation	Midway Airlines	15,500	85,100,000	69,500,000	12/4/97
Transportation	Motor Cargo Industries	12,000	26,800,000	83,900,000	11/24/97
Transportation	Preview Travel	11,000	27,500,000	128,200,000	11/19/97
Transportation	Ryanair Holdings	14,730	159,600,000	405,100,000	5/29/97
Transportation	Trailer Bridge	10,000	27,000,000	93,700,000	7/23/97
Transportation	Travel Services International	14,000	35,000,000	117,700,000	7/22/97
Transportation	Virgin Express Holdings	15,000	96,300,000	140,900,000	11/13/97
Wholesale	800-JR Cigar	17,000	51,000,000	209,100,000	8/26/97
Wholesale	A C Moore Arts & Crafts	15,000	40,500,000	105,000,000	10/8/97
Wholesale	Allstar Systems	6,000	10,600,000	25,000,000	7/7/97
Wholesale	AVTEAM	8,500	38,300,000	71,100,000	10/30/97
Wholesale	Brass Eagle	11,000	25,000,000	100,700,000	11/26/97
Wholesale	DSI Toys	8,000	24,000,000	48,000,000	5/28/97
Wholesale	Dunn Computer Corporation	5,000	5,000,000	25,000,000	4/21/97
Wholesale	Home Security International	10,000	24,000,000	50,000,000	7/15/97
Wholesale	Innovative Valve Technologies	13,000	43,600,000	95,100,000	10/22/97
Wholesale	IWL Communications	8,000	8,700,000	22,100,000	8/12/97
Wholesale	Jenna Lane	5,000	8,000,000	21,000,000	3/20/97

Source: Securities Data Co., Inc. (973) 622-3100 and Disclosure.

Excludes closed-end funds.

The Nasdaq Stock Market and the NASD do not guarantee the accuracy or completeness of these lists and will not be liable for any error they may contain.



Investment Banking Firms (Managers)	Co-Managers	Legal Counsel (Company)	Auditor
McDonald & Company Securities	Morgan Keegan	Baker & Hostetler	Grant Thornton
BT Alex. Brown	William Blair Schroder & Co. Inc.	Pepper, Hamilton & Schaez	Arthur Andersen & Company
Goldman, Sachs & Co. Lazard Freres & Co.	PaineWebber Goldman Sachs Int'l Ltd Lazard Capital Markets	Sevard & Kissel	Deloitte & Touche
Morgan Stanley Dean Witter	Robinson-Humphrey	Fulbright & Jaworski	Ernst & Young
Morgan Keegan	Furman Selz LLC	Van Cott, Bagley, & Cornwall	Grant Thornton
Hambrecht & Quist	NationsBanc Montgomery Sec	Venture Law Group	Coopers & Lybrand
Morgan Stanley	CS First Boston Robinson-Humphrey Morgan Stanley International	Cleary, Gottlieb, Steen & Hamilton	KPMG Peat Marwick
Alex. Brown & Sons		Foley & Lardner	Deloitte & Touche
Montgomery Securities	Furman Selz LLC	Akin, Gump, Strauss, Hauer & Feld	Arthur Andersen & Company
Merrill Lynch & Co.	CS First Boston Salomon Brothers Merrill Lynch & Co.	Davis Polk & Wardwell	KPMG Peat Marwick
Wheat First Butcher & Singer	J.C. Bradford	Morgan, Lewis & Bockius	Ernst & Young
BT Alex. Brown	Janney Montgomery Scott	Blank, Rome, Comisky & Mccauley	Price Waterhouse
Sutro	Crutenden Roth Inc.	Porter & Hedges	Deloitte & Touche
CS First Boston	SBC Warburg Dillon Reed	Baker & McKenzie	Ernst & Young
McDonald & Company Securities	Dain Bosworth	Friday, Eldredge & Clark	Crown Chizek & Company
Tucker Anthony	Sutro	Thompson & Knight	Price Waterhouse
Network 1 Financial Securities		Gersten, Savage, Kaplowitz & Curtin	Ernst & Young
National Securities	Nolan Securities Corp.	D'Ancona & Pflaum	Arthur Andersen & Company
NationsBanc Montgomery Sec	Furman Selz LLC	Baker, Botts	Arthur Andersen & Company
Crutenden Roth Inc.		Munsch Hardt Kopf Haer & Dinan PC	KPMG Peat Marwick
Walsh Manning Securities, Inc.		Individual Lawyer	Edward Isaacs & Co.

Industry	Company	Offering Price	Total \$ Value Of Offering	Market Value At Time Of Offering	Offering Date
Wholesale	Novamercan Steel	14.000	30,800,000	135,800,000	10/30/97
Wholesale	Priority Healthcare	14.500	29,000,000	29,000,000	10/24/97
Wholesale	Somnus Medical Technologies	10.500	42,000,000	71,600,000	11/6/97
Wholesale	Toymax International	8.500	23,000,000	86,700,000	10/20/97
Wholesale	USA Plural Products	13.000	65,000,000	165,600,000	10/9/97
Wholesale	Valley National Gases	8.000	16,000,000	71,300,000	4/10/97
Wholesale	White Cap Industries	18.000	72,000,000	165,200,000	10/22/97
Wholesale	World of Science	6.000	14,700,000	30,100,000	7/8/97

Source: Securities Data Co., Inc. (973) 622-3100 and Disclosure.

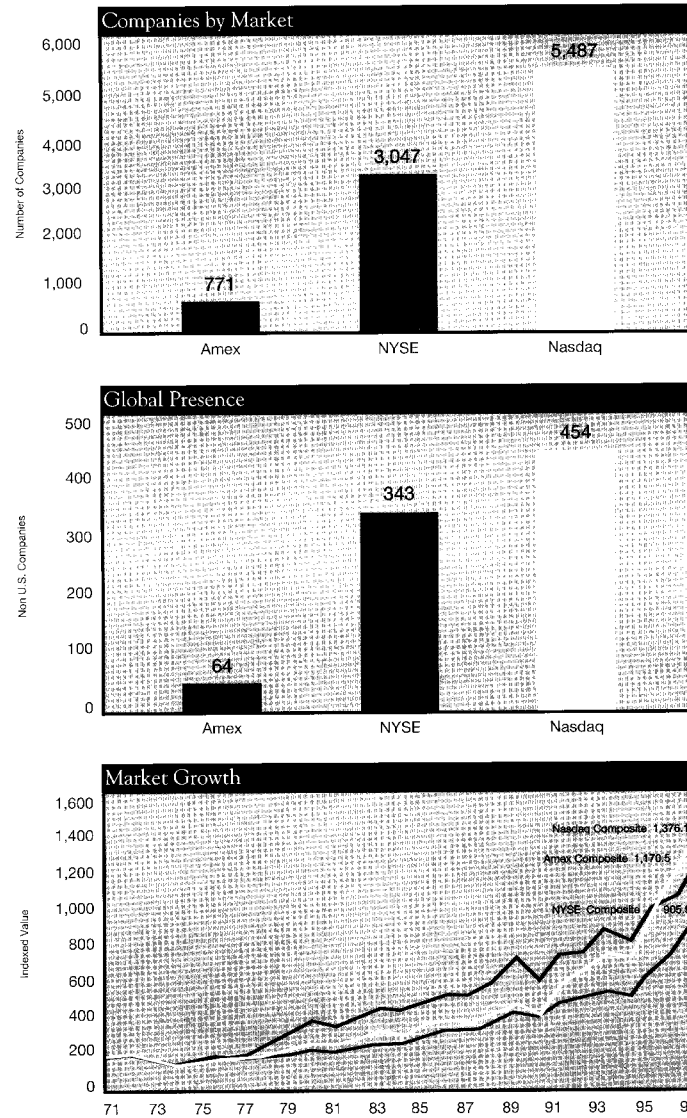
Excludes closed-end funds.

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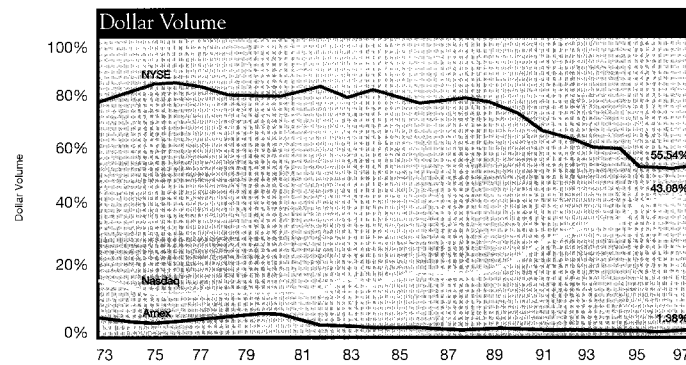
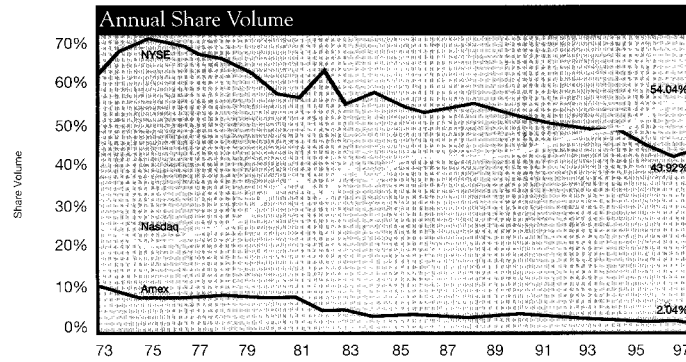
Investment Banking Firms (Managers)	Co-Managers	Legal Counsel (Company)	Auditor
Sakomon Brothers	Prudential Securities	Sullivan Worcester	Grant Thornton
Raymond James & Associates	Wheat First Bulcher & Singer	Baker & Daniels	Pricewaterhouse
JP Morgan & Co., Inc.	UBS Securities Smith Barney Inc.	Wilson, Sonsini, Goodrich & Rosen	Ernst & Young
Fahnestock	Wedbush, Noble, Cooke	Bear Marks & Upham	BDO - Seidman
Morgan Stanley Dean Witter	BancAmerica Robertson Stephens Smith Barney Inc.	Morgan, Lewis & Bockius	Pricewaterhouse
A. G. Edwards & Sons	Oppenheimer	Bryan, Cave, McPheeters & McRoberts	Arthur Andersen & Compan
Donaldson, Lukin & Jenrette	BancAmerica Robertson Stephens	Kirkland & Ellis	Arthur Andersen & Company
A. G. Edwards & Sons	Raymond James & Associates	Harris Beach & Wilcox	KPMG Peat Marwick

## Appendix G

### Market Statistics

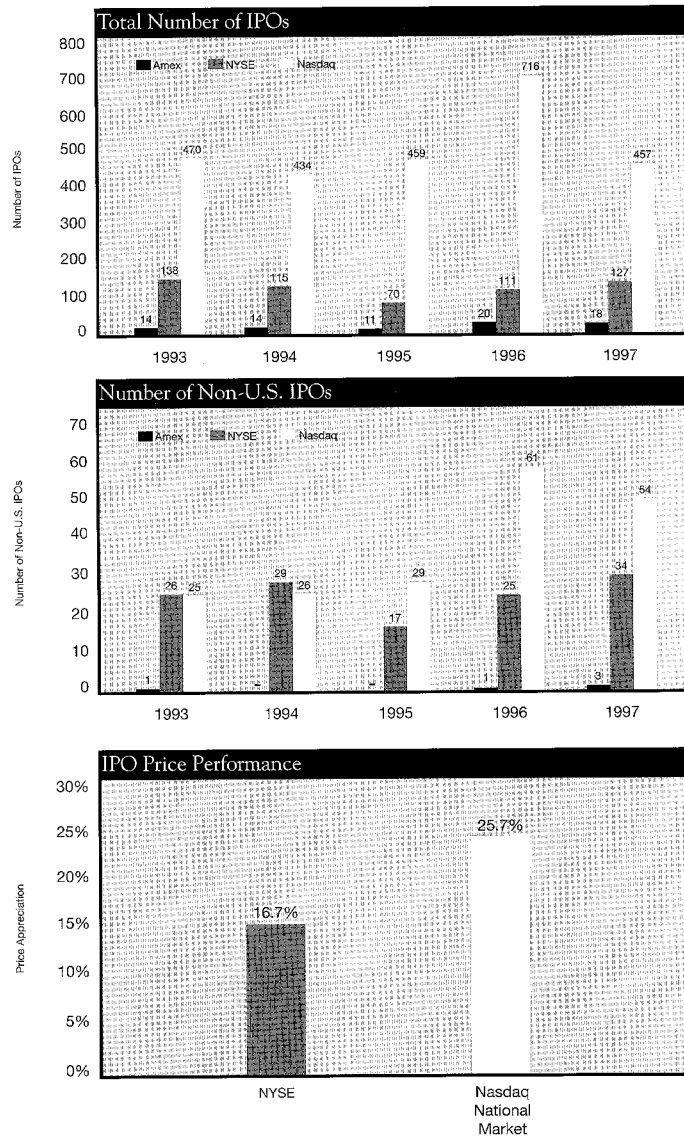


Source: Nasdaq, New York Stock Exchange, American Stock Exchange, as of 12/31/97



Source: Nasdaq, New York Stock Exchange, American Stock Exchange, as of 12/31/97

## IPO Summary



Source: Securities Data Company, FactSet Research Systems (Price Performance)  
As of 12/31/97, firm commitment underwritings including spin-offs only, excludes closed-end funds

Prepared Testimony of  
Michael T. Moe, CFA  
Director of Global Growth Stock Research  
Merrill Lynch

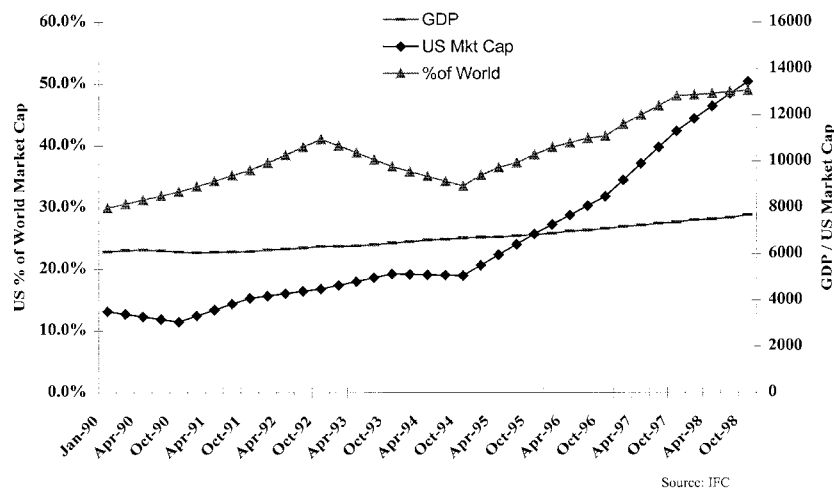
House of Representatives  
Committee on Small Business  
Held by  
The Subcommittee on Government Programs and Oversight  
Washington, D.C.

October 14, 1999

Mr. Chairman, it is my privilege to meet with you and Members of the Committee on Small Business. I am pleased to discuss today what I see as a critical issue for many businesses – the decision to go public.

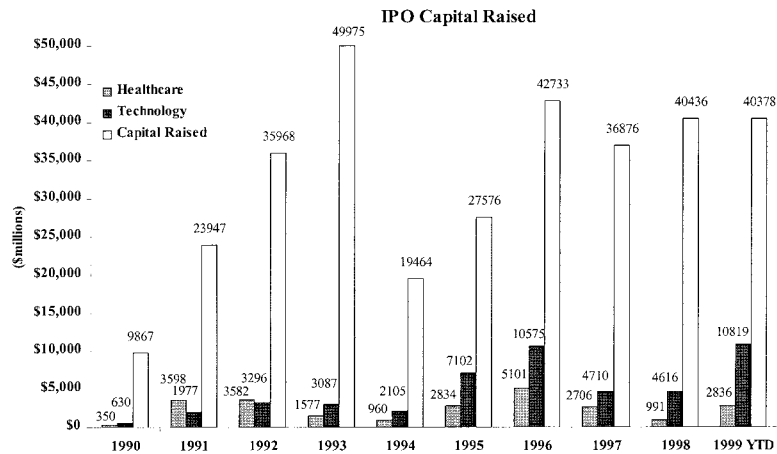
During the 1990s, the U.S. economy and U.S. equity capital markets have experienced remarkable growth. In 1990 GDP was \$6.2 trillion dollars, and by the end of 1998 GDP had reached \$7.7 trillion. Even more staggering, U.S. Equity Market Capitalization has increased from \$3.1 trillion in 1990 (32.5% of World Market Capitalization) to \$13.5 trillion in 1998 (49.0% of World Market Capitalization).

#### US Equity Market Growth



Technology is the driver of the New Economy and IPOs have been the fuel. Since 1990, over 5,000 IPOs in the US have been completed raising \$327 billion. During this period, over 15 million new jobs were created in the United States, many from new companies that didn't even exist the decade prior. Venture capital has also provided significant funding for new companies with \$122 billion invested in the 1990's, \$34.5 billion for technology alone.

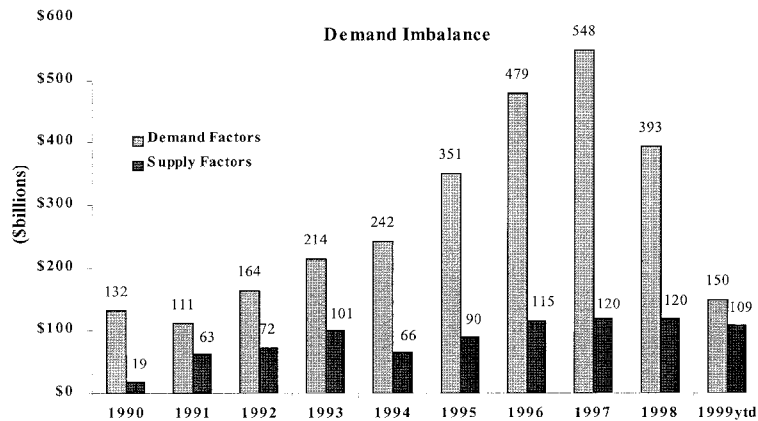




Source: Securities Data Company

Personal computers – PCs – are the automobiles of the 1990's. The difference is that every year PCs get cheaper, faster and better. Information technology (IT) has become so vital to a company's success that IT spending has grown from approximately 5% of capital expenditures in 1970 to nearly 50% today.

Providing additional demand for equities in general and IPOs in particular is the significant "demand imbalance" for equities that has been created in the U.S. capital markets. While a significant \$875 billion of "supply" (IPOs and secondary offerings) has been underwritten by Wall Street during the 1990's, the demand created by cash inflows to equity mutual funds, corporate stock buybacks and cash M&A transactions was 3x greater - \$2.8 trillion. With the aging baby boomers saving for retirement, this should continue to generate net demand for equities for the next 10-15 years.



Source: AMG Data; FactSet

Fundamental to the prosperous times we've experienced in the new economy is its entrepreneurial spirit. The new economy embraces risk taking, encourages growth and views stock ownership and options as a critical motivator to attract and retain employees. Given that the new economy is propelled by human capital, not physical capital, attracting and obtaining talent is critical to a company's ability to compete. Moreover, the capital requirements of many high technology businesses can be substantial and may require public funding. Hence, a company may have enhanced opportunities for success if it becomes a public company.

Leading venture capitalist John Doerr summarizes these trends through the following comparison of the "old" economy and the "new" economy.

**Table: "Old" Economy versus "New" Economy**

Old Economy	New Economy
Labor vs. Management	Teams
Business vs. Environment	Encourage Growth
Security	Risk Taking
Monopolies	Competition
Job Preservation	Job Creation
Wages	Ownership, Options
Plant, Equipment	Intellectual Property
National	Global
Status Quo	Speed, Change
Standardization	Custom, Choice
Top-Down	Distribution
Hierarchical	Networked
Regulation	Pub/Private Partners
Zero Sum	Win Win
Sues	Invests
Standing Still	Moving Ahead

Source: John Doerr, Kleiner, Perkins, Caufield & Byers

Given the perceived benefits of being a public company, more companies are going public earlier than ever before. For example, in 1990 and 1991, 589 companies went public, of which 29% were losing money. From 1998 to today, 779 companies went public, of which 57% were losing money. One reason for this trend is that the expectation for future growth or earnings for many of these companies is substantial despite their current losses. This being said, "being public" is for a long time; and being public, but not performing how a public company is expected to perform, is a recipe for disaster that can lead to fatality. Hence, with the Dow over 10,000 and 3x demand imbalance for equities, the question for many companies is not if one can go public (many can) but whether one should go public.

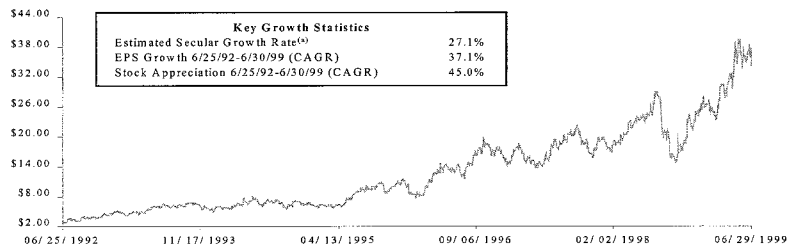
The key attributes for success (stock appreciation) in the public markets are long term earnings growth and performance against expectations. Thus, it's our view that companies need to be able to demonstrate a business model that can sustain high earnings growth and achieve results above conservative analysis. For an example of this, Starbucks Coffee went public in 1992 and was expected to achieve 27% EPS growth. Starbucks delivered 37% EPS growth per year and its stock appreciated 45% per year as a result. In fact, \$1 invested in Starbucks at its IPO is worth nearly \$16 today. Starbucks, in a very new economy way, gives stock options to all of its employees including part-timers (Beanstock Program).

Apollo Group, which owns the largest private university in the United States, had investor expectations of 25% earnings growth. Apollo delivered nearly 50% earnings growth per year and \$1 invested in Apollo Group's IPO in December 1994 is worth approximately \$22 today.

For an Internet example of how the "under promise-over deliver" strategy works for companies that don't make profits, Amazon.com had Wall Street revenue expectations of approximately 70% growth. It achieved 349% growth and \$1 invested in Amazon.com in its May 1997 IPO is worth approximately \$60 today.

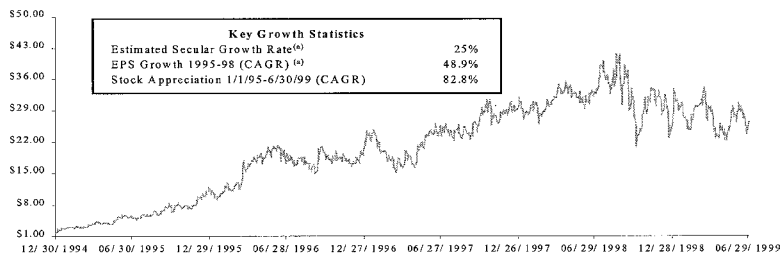
### Starbucks Performance: IPO to June 30, 1999

Starbucks Corp. retails, roasts and provides its own brand of specialty coffee. The Company operates over 1,688 retail stores in North America, the United Kingdom and the Pacific Rim. Starbucks also produces and sells bottled coffee drinks and a line of ice creams.



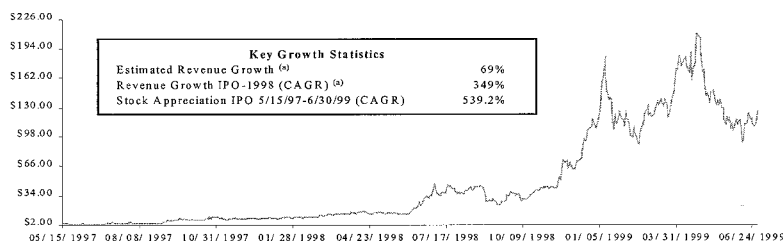
### Apollo Performance: January 1, 1995 to June 30, 1999

University of Phoenix (UOP), a subsidiary of Apollo Group, is the largest private university in the United States and one of the first pioneers to explore the new world of distributed learning. UOP has the largest distributed learning program with more than 9,000 students enrolled and more than 5,000 online.



### Amazon.com Performance: IPO to June 30, 1999

Amazon.com offers more than 4.7 million books, music CDs, video, DVD, computer games and other titles. Since opening for business as "Earth's Biggest Bookstore" in July 1995, the website has quickly expanded into a number of other product areas, enabling the site to become one of the most widely known, used and cited commerce sites on the World Wide Web.



Source: FactSet

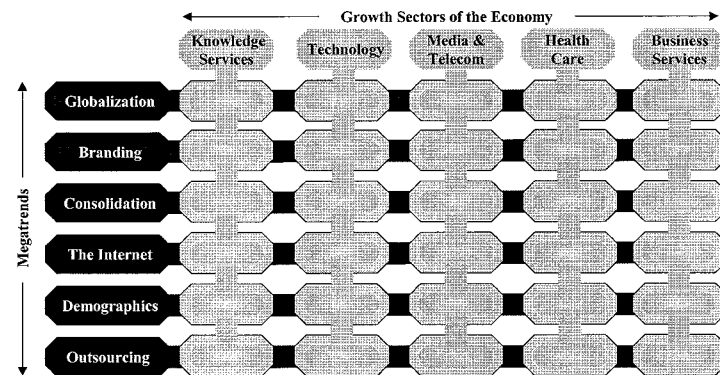
As we believe earnings growth is the key contributor to public company stock performance, we have developed a framework to identify companies that have the essential attributes from which to generate superior earnings growth. This framework reflects our belief that there are certain characteristics that are the key fundamentals inherent in every long-term successful public equity. To this end we focus on four principles of growth stock investing, or the Four P's.

- **People** – A principal variable in an investor's investment equation focuses on the people running the business. There is no shortage of interesting business ideas; the ability to execute is the key. Many growth companies do not have long histories, but their managements all do.

Whether in a country, a company or even a sports team, one "world-class" individual with vision and leadership skills often makes the difference. Wal-Mart, EDS, Disney, and Home Depot are but a few examples of the truly great business success stories that were largely the result of the dreams, skills and leadership of one entrepreneur: Sam Walton, Ross Perot, Michael Eisner and Bernie Marcus, respectively. Surrounding a talented CEO with an experienced management team is crucial for a company's success in the public market.

- **Products** – Investors search for companies with leadership positions within their industries, proprietary products, services or niches that set them apart from the competition or better yet, a "one-of-a-kind" business that has no real competition. A company wants a "claim to fame," something that makes them special or great.
- **Potential** – Investors want to find companies with a meaningful market potential – smaller companies that can become big ones. "Open-ended" growth stories, where there is great potential to expand, are especially attractive. There are a number of interesting little growth companies clipping along that will remain small because of their managements, or the potential size of their markets. A leading company with \$50 million in revenue participating in a market opportunity of a couple billion dollars will attract investors' attention a lot sooner than a company with \$500 million in revenue in a \$1 billion market (unless they believe that market can grow very quickly).

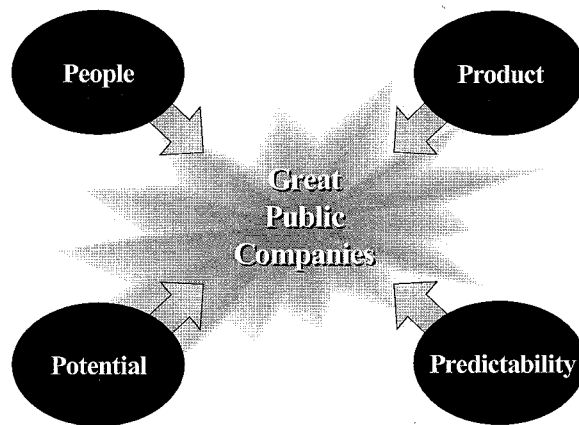
Investors look for themes that reflect changes taking place in society, politics and economics that can provide meaningful opportunities if they are identified early enough. For example, we believe the "education revolution" is a very big idea, as are "global capitalism," "outsourcing" and "the aging of America." Because of the scope and likely longevity of these themes, they should be viewed as megatrends that could provide investors with long-term growth opportunities. A company that provides unique and effective solutions to a large problem offers the classic recipe for an investment opportunity and is therefore of utmost interest to investors.



Source: Merrill Lynch Research

- **Predictability** - Investors look for companies with predictable and growing streams of recurring revenue and visible business models that ensure attractive operating margins. Sustainable competitive advantages, including barriers to entry, economies of scale and scope, an industry leadership position and proprietary technology are the keys to predictable success.

#### How Do You Identify Great Public Companies?



In summary, an IPO and being a public company can have tremendous benefits for the issuing business. Moreover, in the new economy, broad employee ownership and stock options are a competitive necessity to attract and retain the most talented workers in certain industries. The U.S. Capital Markets have provided and are likely to continue to provide funding and liquidity for promising enterprises. Crucial to maintaining this support, markets need to remain open and equitable, and companies need to correctly assess the costs and benefits of being a public company.

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**Prepared Testimony**  
**of**  
**Keith D. Ellison**

**Interim Director**  
**Wharton Small Business Development Center**  
A unit of the Sol C. Snider Entrepreneurial Research Center  
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**Before the**  
**Committee on Small Business**  
**Subcommittee on Government Programs and Oversight**  
**U.S. House of Representatives**

**October 14, 1999**

**Prepared Testimony of Mr. Keith D. Ellison  
Interim Director, Wharton Small Business Development Center**

Committee on Small Business  
Subcommittee on Government Programs and Oversight  
U.S. House of Representatives

**October 14, 1999**

Good morning Chairman Bartlett, Congressman Davis and other members of the Subcommittee. My name is Keith Ellison and I am the Interim Director of the Wharton Small Business Development Center (SBDC), a unit of the Sol C. Snider Entrepreneurial Research Center at the Wharton School, University of Pennsylvania. Thank you for inviting me here to discuss the process of “going public” and selling securities on a stock exchange.

The Wharton SBDC’s mission is to provide management consulting and training to emerging businesses in southeastern Pennsylvania, consistent with the goals of 1,000 other SBDC’s that compose the Association of Small Business Development Centers (ASBDC). Our work at Wharton has led to several successful initial public offerings (IPOs); most notably CDNOW, the nation’s leading e-commerce business in the music industry.

It is my understanding that the Subcommittee is open to finding ways to improve or expand federally funded information sources and assistance. More specifically, your objective is to establish procedures that make going public easier for an entrepreneur of a small business.

In the interest of time and staying with the core of the matter, I will not elaborate on the details of every step of the IPO process; nor will I cover any post-IPO activities. Instead, I will give my definition of a successful offering, briefly list reasons why entrepreneurs decide to take the IPO route and summarize the process. More important, I will highlight three common barriers to small business owners. Finally, I will offer ideas that will hopefully lead to solutions to help entrepreneurs in the process.

#### **DEFINING SUCCESS**

Before we can talk about going public and ways of relaxing barriers, we must establish a clear, common definition of what is considered a successful public offering. Success means different things to different people. For instance, to an investment banker (the underwriter) success means buying a block of a company’s shares at a price lower than its fair value and selling all of them to the public at a premium. To a day trader, success means buying the shares before the price spikes, due to the hype surrounding the announcement of the IPO, then cashing out at the peak, perhaps a few weeks or months later, reaping a substantial gain. To a “patient investor” – an institution or an individual, who holds on to stock for several years – success means gaining a return that meets or

exceeds their minimum desired return. To pre-IPO investors, such as family members, friends, owners, wealthy individuals and venture capitalists, success has a myriad of definitions. Finally, to outside professionals, who help the entrepreneur take the company public, success means handsome commissions, legal fees, another reference account, etc.

These examples, though simplified, illustrate an important point: an IPO often involves divergent interest among participating parties. The most important party is the company/entrepreneur, to whom success means planning and preparing for the IPO with minimal cost and distraction from normal business duties; obtaining the desired amount of capital by selling company shares and maintaining a high confidence-level among the public-investor community by disclosing all aspects of the company.

### WHY GO PUBLIC?

According to a 1985 study by Dr. John E. Young of the University of Colorado, who surveyed 562 companies that went public between 1980 and 1984, there are two fundamental reasons cited by CEOs: ongoing financing and stock-value appreciation. Although the study was conducted nearly 15 years ago, its findings are consistent with past and present informal studies. Ongoing financing is needed to raise capital to support and sustain the growth of a company, i.e. purchase equipment necessary for production, increase inventory, conduct research and expand operations, just to name a few.

James B. Arkebauer, noted authority, best explains stock-value appreciation on public offerings. In *Going Public: Every Thing You Need to Know to Take Your Company Public, Including Internet Direct Public Offerings*, Arkebauer states, “The potential monetary reward that an original investor – whether family member, friend, venture capitalist, or, of course, corporate founder – can realize from the leveraged selling of a company’s stock makes all other financial leverages seem like pocket change. Few legal investments can beat the reward to be gained by an original investor from a successful IPO.”

### THE PROCESS

The process of going public is rigorous, time consuming and complicated, to say the least. The Securities Act of 1933 requires the registration of any form of securities sold to the general public. The intention of the Act is to ensure a company discloses all its business and financial information as well as the securities being offered, so that an investor can make an informed decision. The disclosure must be presented in a carefully and uniformly prepared document known as the prospectus. Any company that intends to sell securities in interstate commerce or through the mail must disclose this information by filing a registration statement and prospectus with the SEC. After review and assessment of company’s compliance with SEC laws, and communication between the



company and the SEC to ensure completeness and accuracy, the SEC approves the offering. No company can sell securities without the SEC's approval. There are a few exemptions to this requirement, which are beyond the scope of this testimony.

In addition to SEC regulations, "blue-sky" laws (i.e. state laws that regulate the issuance of securities) govern the process. In other words, a company must register, file and follow the proper procedures of the regulatory bodies in each state where it sells securities. Finally, the National Association of Securities Dealers (NASD) must also put its stamp of approval on the offering. The NASD primarily examines the methods of how the securities are sold, including dealer and underwriter commissions.

These regulatory bodies and their rules for filing and selling securities via an IPO outline a road map for the entrepreneur who wants to go public. For all the right reasons – public protection, enforcement of fraud, etc. – adhering to these rules is at the center of all the barriers an entrepreneur will face.

#### **BARRIER 1: ASSEMBLING THE IPO TEAM**

Based upon the definition of a "successful public offering" mentioned earlier, the entrepreneur first must assemble a team of professionals – the IPO team – who will aid in the process from start to finish. The team should include the management of the company, the board of directors, consultants, advisors, accountants, attorneys, financial printers, a financial PR company and a transfer agent.

Composing a credible, experienced team with the right reputations and contacts presents the first challenge or barrier for the entrepreneur. It starts with the officers of the company. The degree each corporate officer has a reputable, proven track record of success and relationships with key members in the financial community determines the extent investors will be confident about the future of the company, regardless of having a well thought-out business strategy. Savvy investors place a high value on who is running the company. This applies to board members, too. Most entrepreneurs do not have officers, board members or advisors with the contacts or track records needed to get public investors excited, driving the demand of the stock upward. The underwriters and other professionals know this. Hence, the entrepreneur has very little negotiating leverage for commissions, fees and miscellaneous expenses the company incurs during the process.

To emphasize my point about the importance of relationships and track record, Joseph Segel, was well known on Wall Street when he took QVC, Inc. public in 1986. His prior entrepreneurial success with The Franklin Mint opened the doors to a successful IPO, with merely a business plan, and of course his reputation. There was no existing company with sales, employees and financial statements. The start-up made history for first full-fiscal-year sales by a new public company, with revenues of over \$112 million.

The Joe Segels of the world are rare. In fact, the normal capital matriculation, from start-up to IPO, is as follows:

1. The entrepreneur uses his/her own savings and/or money from a friend or family member (a “rich uncle”) to start the business;
2. The entrepreneur finds an angel investor (a high net-worth individual) or obtains an SBA-backed or traditional business loan to get through the first couple of years of operation;
3. The entrepreneur goes to the venture capital community to take the business to the next level;
4. The entrepreneur takes the company public to gain continual access to capital and to realize stock-value appreciation.

Step 3 is Wall Street’s natural screening mechanism of “unknown” entrepreneurs who want to go public. The IPO market, along with mergers and acquisitions, is one of the most common venture-investor exit strategies. These players want deals that have a high chance of going public. An entrepreneur whose company makes it through the venture capital level, with high returns, has earned his/her stripes and has met influential people along the way. These influential people become officers, board members, underwriters, attorneys and others who make up the IPO team.

One may ask, why not just follow steps 1 through 3, first? The answer to that question would require another testimony. But a common concern among bankers, angels and venture firms is consistent with that of the public investment community - who is running the company?

## **BARRIER 2: EXCESSIVE COSTS**

The second barrier to a successful IPO is the total costs incurred from meeting the strict rules of the SEC and state regulatory agencies. The list of costly activities include due diligence, audited financials, corporate clean-up, printing the prospectus and other materials, filings, public relations and other unexpected expenses. Where do the funds go? Toward legal and accounting fees, expense allowances, phone calls, entertainment, meetings, advertising, etc. According to Jerry Maginnis of KPMG in Philadelphia, PA, who worked with Joseph Segel on the QVC IPO, “Excluding underwriter commissions, it is difficult for an entrepreneur to spend less than \$0.5 million,” before wrapping up the IPO.

## **BARRIER 3: CONTINUAL DISTRACTIONS**

Intertwined with the financial cost of doing an IPO is the time and attention it takes, the third barrier entrepreneurs face. According to Julie Munzinger of KPMG in Wilmington,

DE, “The IPO process is so time consuming that it becomes a major distraction from what is most important – running the business.”

For example, during the corporate clean-up stage, an entrepreneur must eliminate or fix anything that would be difficult to explain to an outsider, including excessive owner compensation, non-business assets appearing on the books, and payments to non-employed relatives, to name a few. Even with legitimate business issues, the entrepreneur must examine the merits of the company’s operations, structure and strategy and consider making the necessary changes to increase investor confidence. The result can lead to renegotiating existing contracts with customers and suppliers, hiring or firing employees, selling a particular business unit, paying down debt, etc. Although in the long run these steps may be good for the company, completing them in a short period can be exhaustive. A rule of thumb is that an entrepreneur should begin planning at least 18 months prior to filing. This means 18 months of creative energy diverted from running the business.

Communicating with the SEC through pre-filing conferences, comment/deficiency letters, amendment submittals, etc., also can be an emotional drain and a time consuming distraction.

Assembling a good team, incurring excessive costs and experiencing continual distractions are three, among many, challenges and barriers an entrepreneur faces when going public. However, the popularity of Internet start-ups and other high-tech outfits is changing the rules on Wall Street. In the midst of this transition, more entrepreneurs see an IPO as an enticing option. Therefore, now is the time to act.

#### **AN EXPLORATORY IDEA**

The barriers I have covered earlier are unavoidable. The benefit to the entrepreneur is that they create an obstacle course that will help him/her fine-tune the company’s overall operations and business strategy. However, the brunt of pain in assembling an IPO, reducing expenses and minimizing distractions need not be placed on the entrepreneur.

The role of SBDC’s and other federally funded, economic development entities is to help early stage companies reach their milestones, e.g. starting businesses, growing sales, increasing employment, etc. As stated by one of my MBA counselors at the Wharton SBDC, Todd Jaquez-Fissori, “Our greatest impact in helping clients go public is in educating them right from the start, by helping them set up the right internal controls, early.”

Under the theme of starting early, I recommend that the Subcommittee commission an official study examining all barriers and potential solutions during our period of change, our global, technological revolution. Concurrently, I recommend the Subcommittee provide ASBDC member-organizations with complimentary resources to help entrepreneurs prepare to go public.

Again, I thank you for allowing me the chance to share my thoughts. The timing of this hearing could not be better for the Wharton SBDC. Our center is currently revising its strategic plan. With our history of clients in southeastern Pennsylvania who have gone public, we anticipate becoming a beacon to other entrepreneurs, nationwide. Furthermore, we hope to continue to assist the Subcommittee in its quest for answers.

Written Statement  
By Mr. Mark Dankberg  
President and Chief Executive Officer  
ViaSat, Inc.  
Carlsbad, California  
Before the U.S. House of Representatives  
Committee on Small Business  
Subcommittee on Government Programs and Oversight  
October 14, 1999

Thank you Mr. Chairman for inviting me to appear before your Subcommittee and providing the opportunity to tell the story of my company, ViaSat, and how we have created nearly 400 new jobs in the last 12 years.

ViaSat is a prototypical American success story. Steve Hart, Mark Miller and I founded the company in "bootstrap" fashion - working out of a spare bedroom in my home. The company has grown to become a leading provider of digital satellite and radio communications products for both defense and commercial use.

ViaSat has increased its sales every year since inception. We have been profitable every year since 1987 - after showing a slight loss in our first year.

Now headquartered in Carlsbad, CA, near San Diego, ViaSat employs nearly 400 people with sales in excess of \$70 million for the fiscal year ended Mar 31, 1999. Our economic impact is extended through a network of subcontractors throughout the United States.

We progressed from a self-funded bootstrap start-up, to venture capital seed funding, followed by a commercial bank line of credit, and then successfully completed an IPO in December, 1996. We are now listed on the NASDAQ with the symbol; "VSAT". Along the way, the company earned three appearances on the Inc. 500 list of fastest growing private companies, and since going public has been cited twice each by Business Week and Forbes magazines on their lists of fastest growing small public companies.

Our basic message is that we believe the US entrepreneurial environment is the best in the world, and that our system works. The public and private resources available to entrepreneurs, combined with commitment, dedication, hard work and at least a little good fortune offer real opportunities to live the American dream of starting a company and taking it public. The government's Small Business Innovation Research (SBIR) program was especially valuable in helping to grow the company.

We at ViaSat greatly appreciate the opportunity to tell our story, relate our experiences, and offer our perspective on going public in the current stock market environment.

We are a high technology company specializing in advanced digital communications products and systems. Many, though not all, of our products involve ground equipment for satellite communications networks. ViaSat serves customers around the world, including the US, Europe, Asia and Africa. A significant majority of our business is defense communications oriented, though our fastest growing segment is commercial satellite networking equipment and services.

#### Beginnings of the company

ViaSat was incorporated in California in May, 1986. The three founders had worked together as engineers at Linkabit Corporation in San Diego prior to starting ViaSat and were each in the neighborhood of 30 years old at the time. I had experience managing a business area at Linkabit with about \$35 million per year in annual sales, so I became ViaSat's CEO. Linkabit had been founded by Drs. Irwin Jacobs and Andrew Viterbi who also went on to form Qualcomm. Linkabit was itself a small, high tech start-up company until

it was acquired by M/A-Com in 1980. Our experience at Linkabit served as a template for our own company.

ViaSat was initially very thinly capitalized with less than \$25,000 invested by the founders to incorporate the company, acquire some Macintosh computers, and fund initial operations. Our first customers were defense prime contractors who valued the founders' experience and expertise in military satellite communications. We began with consulting contracts and teaming agreements that would lead to additional business if our customers were successful in winning programs we were supporting.

We were able to obtain contracts worth about \$75,000 within the first few weeks of operation. That allowed us to begin earning salaries and accumulate some working capital. It also helped us close a transaction with a venture capital partnership (Southern California Ventures) to raise \$300,000 in seed funding by the end of that first summer. The venture investors received preferred stock for approximately a 50% ownership stake. Ultimately, this turned out to be an excellent investment for them, with a return of about 100-fold at the time we went public ten years later. The founders felt that the equity investment was much less risky than debt financing, and were also satisfied with the agreement.

The venture investment enabled us to lease office space, acquire additional computer hardware and software, and begin hiring other employees. The venture investors agreed that the company would sell additional shares of common stock to new employees as the company grew. The target was to have about 20% of the equity in the hands of new employees by the time the company had reached \$15 million per year in sales.

ViaSat intentionally adopted a bootstrap strategy that was based on squeezing maximum utility from our equity capital. It affected virtually every aspect of our company. For instance:

- We decided to work with customers who placed value on having products (hardware and software) designed and manufactured to their custom requirements. Those customers were willing to pay for product research and development instead of requiring us to invest in our own R&D. While defense communications and electronics was a natural fit for this model, we also earned a fair amount of commercial hardware and software business with companies such as IBM and 3M. Of course, the availability of the government's SBIR program was a key factor in deciding to pursue this course.
- Our product manufacturing strategy was based on outsourcing electronic circuit card assembly to "contract manufacturers". Otherwise, electronic manufacturing equipment would have accounted for a disproportionate amount of investment capital for our business model.
- The company was very focused on managing our available working capital. We worked closely with both our customers and our suppliers to minimize cash working capital requirements. We worked either directly with the government, or with highly credit worthy industrial customers. We were also very careful in defining contractual delivery requirements and the associated payment schedules. We found the US government to be a supportive customer, with favorable billing terms for small businesses and prompt payments.
- We adopted a somewhat unconventional strategy of selling stock to employees, rather than the more typical approach of simply granting stock options. We accomplished this through an application and permit process with the California Department of Corporations. While this initially involved relatively modest investments on the part of employees it was effective in several ways. Buying the stock with real cash probably gave our employees a greater appreciation of its value. Plus, as the company grew in size and value, we continually offered shares to new employees and additional shares to old timers. The associated steady appreciation in stock value helped all employees clearly visualize the potential value of their work and helped keep turnover extremely low – a real accomplishment in the hot San Diego high tech job market. Plus it eventually resulted in a meaningful source of equity capital. Over the ten years between inception and the IPO the company raised about \$500,000 in sales of stock to employees. This source of equity capital, along with careful cash flow management and eventual use of commercial bank credit, helped avoid the need for additional outside equity capital, resulting in a greater share of equity for all the

early investors. Of course, the success of the company meant that employees also earned an excellent return on their investment.

During the start-up stages of the company, we did not undertake any debt financing. Given the small size of the company, our relatively thin equity basis, and the relative inexperience of the founders, we could not acquire any form of debt without personal guarantees from the founders. Given that we each already had small children and large mortgages, we chose not to go that route – reinforcing our bootstrap strategy.

However, once we reached about \$5 to \$10 million per year in sales, we were able to negotiate a revolving credit line secured by accounts receivable, as well as a capital equipment credit line – both without requiring personal guarantees. These credit lines, offered by a local San Diego bank (Scripps Bank) were pivotal in financing our growth up through the IPO.

I should note that we always felt as if our capital strategy was always a matter of *choice* on our part. At no time did we ever feel “misunderstood” or “discriminated against” by potential equity investors or commercial banks. We believe the financing strategy we elected was a reasonable choice based on our investors’ and employees’ collective objectives, the business plan and strategy of the company, and prudent decisions on the part of potential debt and/or equity investors. While, in retrospect, our capital choices were good ones for us, there were clearly many, many different options we could have chosen as a private company. This range of choices makes for a rich environment for start-ups with a variety of business strategies.

One of the critical factors in our early history was the availability of sound advice from a number of sources. In particular, a few years prior to starting the company I had been introduced to Dr. Jeffrey Nash, founder and CEO of another San Diego start-up company, Verac.

Dr. Nash was extremely helpful in getting our company off the ground in a number of ways. He referred us to a law firm with expertise in start-ups, especially regarding securities law for private companies. He introduced us to a small accounting firm with a good understanding of our type of business. He also served as a critical reference in establishing our credibility with the venture investors. Once the company was incorporated, he made a significant cash investment, and joined our board of directors (where he serves to this day). Perhaps most important, he provided encouragement and advice that helped give us the confidence to start the company in the first place.

Since that time, the breadth of my perspective has increased and it seems to me that virtually all successful start-up companies have somehow benefited from the help, counsel, and encouragement of entrepreneurs like Jeff Nash. I believe America’s large base of experienced mentors is truly a national treasure, and one of the key enablers in our nation’s enviable small business growth engine. I know that in our case in particular, he was more motivated by a desire to help, than by the prospects of financial return from our nascent venture. I don’t think this is at all unusual. I think we should appreciate and respect the contributions these entrepreneurs and mentors make and the risks they take when they help people like me start a new business.

One of the areas we should be sensitive to is the risk of successful entrepreneurs being treated as “deep pockets” in litigation surrounding the inevitable number of failures associated with risky new ventures. Surely, corporate advisers and directors for companies of all sizes must be responsible for their actions, but if we are not sensitive to the risks they take, then we jeopardize one of our country’s most valuable and unique resources in new business formation.

#### Role of SBIR in the company’s growth

Given the importance of funded, product-oriented R&D in our business strategy, the federal SBIR program was a key enabler in our growth. ViaSat has been one of the most successful companies ever at converting SBIR R&D funding into commercially viable “Phase III” business.

I believe the SBIR program is probably the single most effective government program for economically fostering the growth of both small business and innovation.

ViaSat's first direct government program was a \$50,000 SBIR Phase I contract for a very ambitious and complex communications environment simulator for the Naval Air Warfare Center at Patuxent River NAS, Maryland, awarded in 1987. Our Phase I performance earned an additional \$500,000 in SBIR Phase II funding. Since then, we have received over \$40 million in Phase III contracts from the Navy, the Air Force and prime contractors for products directly derived from those SBIR awards.

Based on competitive bids and reviewing comparable products from very large defense contractors, we believe that our innovative solution has saved taxpayers at least an additional \$40 million in procurement costs to date. That is, competing systems, without the innovative technology developed under our SBIR funding, would have cost the government at least twice as much as ours.

We have repeated this type of success in several other business areas, generating over \$100 million in Phase III contracts in several different areas, with similar savings relatively to comparable products offered by large defense contractors.

Recently, ViaSat was designated one of the only two qualified US sources competing for manufacture of the MIDS (Multifunction Information Distribution System) Low Volume Terminal, with a potential US DoD multi-year production contract value of close to \$1 billion (not counting potential international sales). The SBIR program has been instrumental in enabling us to compete effectively against a joint venture formed by two multi-billion dollar corporations.

Clearly, the SBIR program, as it currently exists and as it's currently implemented, works. We are especially appreciative to have a dedicated group of motivated and resourceful SBIR program managers in each of the military services. I think that one of the best things about the SBIR program is the mindset that it engenders – that great things can, and should, be accomplished with relatively small amounts of well-conceived R&D funding. This is completely consistent with the entrepreneurial spirit of high tech start-ups. It is certainly a mind set that ought to be nurtured and encouraged in the government R&D and procurement environment.

In the spirit of improving on an already good thing, I would like to make a few observations about the SBIR program based on ViaSat's own experience.

1. While the SBIR program was a major factor in our growth and success, it alone is not sufficient to sustain a very thinly capitalized bootstrap company. There are several issues including: relatively long funding gaps between Phase I and Phase II contracts; inevitable glitches in contract timing and awards due to the underlying R&D budgeting and contracting process that drives SBIR funds; the specialized contract and administrative expertise required to navigate the contracting process; issues regarding rights in technical data; and others.

I do not, however, necessarily advocate changing the SBIR program itself to address these issues. It is not necessarily healthy for small businesses to be *overly dependent* on SBIR contracts. Most of these SBIR issues are artifacts of being administered within federal contracting agencies that are working bigger issues. However, one of the key benefits of the SBIR program is that it is administered within the same channels as "mainstream" programs. This helps give awardees access to the funded programs and contracting agencies that are the target markets for the SBIR innovations.

We would suggest that the government continue to educate small business that SBIR funding is intended to be a means to an end – not an end in itself. Small businesses ought to be encouraged to establish a business model and capital resources that, early on, are robust enough to handle these SBIR contract administration issues.

2. We believe that one of the main advantages of the SBIR program is the contracting and procurement environment that it establishes. That is, SBIR encourages investigation of high risk/high payoff solutions



through small, incrementally funded contracts. SBIR contracts are often tolerant of the associated technology and programmatic risks. This is in contrast to the more typical low risk/low payoff environment for large government contracts. We think this mindset can and should be extended to more mainstream R&D programs, even those involving large government contractors.

This approach requires more advanced planning, but can have two key benefits: a) creating an environment that values innovation and promotes competition among smaller businesses and giant conglomerates on a more level playing field, and b) creating the opportunity to substantially reduce procurement costs through an acquisition strategy that methodically mitigates risks associated with innovative solutions that might otherwise be prematurely rejected.

3. Given the incredible level of consolidation in the defense industry, the government may wish to reconsider its definition of a “small business” for SBIR purposes.

The current definition is 500 employees, which was set at inception, many years before the industrial consolidation of the post Cold War period. Compared to the dominant defense primes such as Lockheed-Martin, Boeing, and Raytheon, even a 1,000 person company doing \$200 million in annual sales is a very small company, indeed. We believe that increasing the size limit would increase the effectiveness of the program, without necessarily damaging its value to start-up businesses.

4. The SBIR program is intended to provide specific contracting advantages to small businesses. However, it is often administered through program offices that are experienced in contracting only with large companies on terms that are more advantageous to the government. For a variety of reasons, some program offices may perceive SBIR contracting terms to be inconsistent with the best interests of the government, particularly regarding rights in technical data, *despite explicit legislation to the contrary*. We have found on several occasions that it would be helpful if procurement agencies had a better appreciation of Congress’ “big picture” intent to pro-actively support small business through the rights in technical data provisions of SBIR contracts.

#### Process of going public

ViaSat began the process of going public in 1995, completing our IPO [Initial Public Offering] in early December, 1996. The decision to go public was considered carefully and was motivated by several major, yet commonly considered, factors:

- A desire to raise additional equity capital at a favorable valuation relative to that believed attainable from late stage private venture capital investors. By this time the company had incurred a significant level of revolving credit debt relative to its equity base.
- A desire to provide increased liquidity to both preferred and common shareholders who had held stock in the company for a long time (ten years).
- A desire to keep the company independent in order to create an environment for continued growth through preserving the board of directors, management team, and corporate culture.
- Enhanced ability to quickly raise additional capital to address market opportunities.
- Belief that listing as a public company would increase the company’s perceived stature – which would be a factor in competing for international and commercial contracts.

The board of directors, at the start of the IPO process, consisted of 4 “outside” directors and one insider (the CEO). Three of the outside directors were also on the boards of venture-backed companies that had successfully completed IPO’s and were currently publicly traded. Both the board and management believed that they appreciated the benefits and disadvantages of being publicly traded and were in a position to render informed opinions in favor of an IPO.

The board also sought informed outside opinions from prospective investment bankers, legal counsel, and our outside auditors regarding potential valuation and the perceived public market demand for our stock, as well as any unique risks associated with our business strategy. We evaluated and tracked valuations of comparable already-public companies to form our own opinion of the company's value. We also recognized the uncertainty of completing an initial offering in a volatile stock market, and believed the company's financial position could tolerate a failed IPO.

During spring of 1996 the company assembled a team consisting of three investment banks, experienced legal counsel, and our public auditors to begin the IPO process. Despite our belief that we understood and were prepared for the offering process, we found that it took much longer than we expected, and absorbed much more executive management time than we thought it would. This was driven primarily by market factors including the volatility of the stock market; fluctuations in the valuations of comparable companies; assessment of the receptivity of public investors to IPO's in general and for micro caps in our field in particular; and our team's efforts at developing an offering prospectus that fairly captured the risks and opportunities associated with our business.

In general, there were little or no issues regarding SEC review of our offering documents. We attribute this to the strength and history of the company, the expertise and experience of our IPO team, as well as a positive and constructive approach by the SEC.

One area where we invested significant pre-IPO effort was with regard to "cheap stock" – i.e. the perceived difference in value between the most recent private offerings of stock and/or options compared to the expected IPO price. This was a challenging issue for us because of several factors:

- It is a "hindsight" test. That is, the "cheap stock" issue cannot be considered by the SEC until after many unknown (and unknowable) events have already unfolded.
- Our capital strategy involved an ongoing and steady stream of common stock sales and/or options to employees.
- There were several key variables that were still to be determined between the time that the last private offerings were to occur and the IPO was anticipated that would have a material impact on valuation. These included potential contract awards, as well as completion of significant R&D milestones under existing contracts.
- The timing of the IPO itself was uncertain due to stock market volatility.

Ultimately, there was no SEC contention relative to "cheap stock". The company took several prudent steps to mitigate risk associated with this, including: obtaining outside appraisals of the company's value prior to the IPO; and carefully managing the timing, and valuation of private offerings prior to the IPO in the context of the outside appraisals. However, I believe additional objective SEC guidance regarding the cheap stock issue may be useful to companies, given the potential post-IPO impact of an adverse determination.

Overall, our IPO was successful and our stock was stable in the after-market. We believe that the SEC acted in a timely and constructive manner.

In retrospect, there are certainly things that we could have done better in managing the offering process, but those were almost completely due to our own inexperience. Most of these factors involved managing the road show process, including selection and timing of investor meetings, and the timing of the offering date itself with respect to the holiday schedules. Some of these factors may have been influenced by the relatively small size of the offering in the context of the market as a whole (approximately \$20 million total).

Probably the single greatest risk factor was the volatility of the stock market. This influenced the length of time involved in creating the offering prospectus, as well as the timing of the offering itself. We cannot identify anything the government could or should do about this risk. We would strongly advise companies considering an IPO to have a contingency plan in the event that market conditions prohibit, or substantially delay, the completion of an offering.

#### Life as a public company

ViaSat has been publicly traded for almost 3 years. During this time our revenues and earnings have increased relatively consistently to almost triple their levels at the time of the IPO. Still, our stock has both risen and fallen significantly several times in this interval. While it is not always possible to attribute market volatility to specific events, we appreciate that there are many factors involved, including:

- Availability and attractiveness of other investment opportunities.
- Changes in investment strategies of investors over time.
- Market structural factors, including the relatively small amount of our stock available for public trading.
- Company performance factors other than earnings, including new contract awards, and the mix of commercial and government contracts.
- Outside events impacting perceptions of future prospects for our markets in satellite communications, defense communications, or specific international markets.

Over this time, the board of directors and management have continued to explore, consider and evaluate alternative strategies to create and increase shareholder value. We have primarily focused on sustained internal growth. Since the company has been profitable in the intervening time, we have been able to reduce debt, grow our asset base, and increase our cash position compared to our situation immediately following the IPO. We believe the IPO accomplished its intended purposes of strengthening the balance sheet, improving liquidity for long time shareholders, and positioning the company for continued growth.

We believe that we entered the process with “open eyes” regarding life as a public company, especially with regard to pressures from Wall Street to provide steady and predictable quarterly earnings growth. Still, life as a public company is not always exactly the way we expected. In particular:

- Employees consider an IPO as a watershed event. Even though there is the potential for even greater shareholder value creation as a public company –employees may perceive that most of the value they might earn has already been realized at the IPO. The net result is that employee turn-over may increase, with a lot of that associated with people joining other pre-IPO companies. It takes very careful and thoughtful communication on the part of the company to address this perception while fairly representing both the potential returns and risks associated with its now-public stock.
- The general volatility of the public stock markets makes it more difficult for employee/shareholders to associate steady company growth with a steadily increasing company market value. This is somewhat taken for granted as a private company, but that impression is clouded in a volatile public market. The result is that employees can begin to feel that their individual efforts (which management directs towards company growth) are no longer directly connected to their stock price. It takes a lot of very careful communication to address this perception, as well.
- Communicating with public shareholders is much more complex and time consuming than it was as a private company.

- Employees become acutely aware of the effect that Wall Street has on stock valuation. Prior to an IPO, employees are more likely to assume that management does things “that make sense”. After an IPO, employees may believe that management takes actions that are driven by anticipated Wall Street reactions to near term quarterly results – with associated negative connotations regarding their assessment of the company’s long term strategy.
- Given the underlying, and apparently increasing, volatility of the stock market in general, combined with the inherent unpredictability of our high tech business, a significant amount of executive management attention is consumed with working to mitigate the ever-present risk of shareholder “strike suits”.

#### Recommendations

In conclusion, I would like to reiterate that we believe the US entrepreneurial environment and capital markets are the best in the world. From our perspective, the government has fostered an excellent environment, offering a broad range of opportunities and choices for capital structures. The SBIR program is an excellent additional resource for R&D funding. We would propose that Congress consider extending the size limit associated with SBIR to better reflect the current state of defense industry consolidation.

Of course, the favorable environment, in itself is in no way a guarantee of success for entrepreneurs or investors. It still requires a combination of innovation, determination, preparation, skillful execution, good timing and at least a little bit of luck to be successful in executing an IPO. In particular, it seems to me that far more of the risk is due to the volatility of both capital markets and global high technology product markets themselves than the government’s methods or processes for regulating IPO’s.

From my perspective, the one issue that we would very much like to see the government resolve more clearly is in regards to shareholder “strike suits”. This is not just a small-business issue, nor is it necessarily an IPO related issue. But it is a major factor in the life of small public companies. A strike suit can be particularly devastating to a small company with limited management “bandwidth” – especially given that they generally hit when management is simultaneously consumed by some unpredictable (or unknowable) underlying business condition that brought on the stock decline that triggered the suit in the first place. Of course, we do not advocate undermining the rights of investors to remedy fraudulent actions. We simply suggest that the government could even more clearly delineate, and enforce, safe harbor provisions that define the bounds of acceptable behavior.

And finally, in response to the requirements for disclosure of federal grants and contracts as required under the terms of rule XI, clause 2(g)(4) of the Rules of the House of Representatives we have submitted copies of ViaSat’s annual reports for the prior two fiscal years.

Thank you once again for this opportunity to present our story.

WRITTEN STATEMENT OF THE NORTH AMERICAN SECURITIES  
ADMINISTRATORS ASSOCIATION

House Small Business Committee  
Government Programs and Oversight Subcommittee

Hearing on "Going Public" Issues  
October 14, 1999

The North American Securities Administrators' Association ("NASAA")<sup>1</sup> welcomes the opportunity to provide input as the Government Programs and Oversight Subcommittee of the House Small Business Committee holds a hearing on "going public" issues.

The states have long been leaders in developing and administering programs that facilitate small business capital formation. These efforts consist of specialized registration and exemption programs designed to help local entrepreneurs raise seed capital to expand their businesses through small stock offerings; review programs that create uniformity and decrease costs and effort; and outreach efforts and technical assistance to help small businesses through the regulatory process

**Registration and Exemption Programs**

**SCOR.** One of the biggest hurdles facing a small business that wants to sell its securities is the cost associated with preparing an offering. Legal fees alone for a typical small offering can amount to tens of thousands of dollars. The "Small Company Offering Registration" (SCOR) program addresses this problem through the use of a question-and-answer, fill-in-the-blank offering circular that is designed to lead an issuer through the process of creating an offering circular or prospectus that adequately discloses the features and risks of the offering. In addition to the form itself, the states have created an Issuers Manual that explains each question on the SCOR form in detail, points out common pitfalls, and provides sample responses to certain questions. NASAA recently approved changes to the SCOR form and accompanying manual to make it more user-friendly for both issuers and investors

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<sup>1</sup> The oldest international organization devoted to investor protection, the North American Securities Administrators Association, Inc., was organized in 1919. It is a voluntary association with a membership consisting of the 66 state, provincial and territorial securities administrators in the 50 states, the District of Columbia, Canada, Mexico and Puerto Rico. In the United States, NASAA is the voice of the 50 state securities agencies responsible for grass-roots investor protection and efficient capital formation.

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Once the SCOR form is completed, it must be reviewed and approved by state securities regulators. If it is a multi-state offering, one state regulator may take the lead in working with the issuer, consolidating comments by other state regulators. This process is described in our discussion of Regional Review, below. The approved SCOR form is used as the offering circular for the offering and the offering can be made "publicly," meaning that the offering can be advertised in the newspaper, on radio, through mass mailings, or any other public means.

SCOR was first adopted more than a decade ago and is currently used in approximately 47 states. More than 1,100 companies across the country have used the SCOR program to sell shares to the public. These companies range from microbreweries to small banks and technology startups.

Offerings using the SCOR form are made in reliance upon one of three exemptions from federal securities registration: the intrastate offering exemption (SEC Rule 147), Rule 504, or Regulation A, where the SCOR form is called "Model A". SCOR offerings are typically small. Federal Rule 504 is limited to offerings of \$1,000,000 or less, while Regulation A is capped at \$5,000,000. These offerings are generally too small to result in a listing on NASDAQ or any of the national or major regional stock exchanges.

**Model Accredited Investor Exemption.** In April 1997, state and provincial regulators approved the Model Accredited Investor Exemption (MAIE), which provides an exemption from state securities registration requirements to small businesses offering securities to accredited investors. The MAIE is based on the premise that accredited investors, defined by the SEC as wealthy individuals or institutional investors, are capable of undertaking their own due diligence and gauging the risk factors before making any investments. At the federal level, MAIE works with the SEC Regulation D, Rule 504, to provide an exemption for offerings up to \$1 million. The SEC has the authority to adopt a rule that would allow offerings up to \$5,000,000. It has previously used this authority to adopt Rule 1001, which provides a \$5,000,000 exemption for offerings made pursuant to California Rule 25102(n).

Thirty-three states plus Puerto Rico and the District of Columbia have adopted a form of this exemption and seven more states have bills pending in their legislatures. Use of the model accredited investor exemption has resulted in greater use of the Small Business Administration's Angel Capital Electronic Network ("ACE-Net"), which provides Internet access to "angel" or accredited investors looking to invest between \$250,000 to \$5 million of seed and startup capital in small businesses.

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### **Review Programs**

**Coordinated Equity Review ("CER")** is available to issuers seeking to sell equity securities. It provides a uniform state registration procedure designed to coordinate the blue-sky registration process in all of the states in which the issuer seeks to sell. In addition to creating uniformity in the review, the program is designed to expedite the registration process, saving the issuer time and money. Of the 42 state securities agencies that register these types of offerings, 38 are currently participating. CER is designed to target stock offerings on the NASDAQ Small Cap, over-the-counter, and other small exchanges. The size of these offerings typically ranges from \$5 million to \$20 million dollars.

Pennsylvania is the coordinating state for CER. Instead of a company having to deal with each state individually, the program calls for Pennsylvania to designate two reviewing states – a lead disclosure state and a lead merit state. These two states canvass all other states and formulate one set of regulatory comments for the company. Comments are based on a uniform set of standards that the CER states have agreed upon. Once all regulatory comments are satisfied, the lead states notify all other states in which the company has filed to sell its securities that the offering is ready for registration. This process effectively shifts the compliance burden of collecting and synthesizing regulatory comments from the company to the states, saving small business much time and effort.

Thirty-two companies whose offerings ranged from \$2.8 million to \$36.9 million have taken advantage of CER since it began in June 1997. The issuers have praised the program as greatly streamlining the blue-sky registration process. Said one participant:

"I recently participated in the CER program with a form SB-2 and was satisfied far beyond my expectations. We cleared approximately 37 states in three weeks even though the offering presented many of the common merit issues, which normally would have been significant obstacles to registration in many states. I would not hesitate to do it again and would never revert to doing an offering the 'old fashioned' way."

**Regional Review.** Regional Review is a coordinated effort for small regional public offerings of securities that are exempt from SEC registration under Rule 504 or Regulation A. Similar to CER, Regional Review provides a uniform state registration procedure designed to coordinate the blue-sky registration process in all states in the region in which the issuer seeks to sell. In addition to creating uniformity in the review, the program is designed to expedite the registration process, saving the issuer time and money.

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As in CER, a single state is responsible for coordinating the review of all other members and communicating with the issuer to resolve outstanding comments. Once the lead state clears the application, all participating states agree to clear it as well. There are currently four participating regions – the Western, Midwestern, Northeast and Mid-Atlantic regions encompassing 33 states.

#### **Outreach Efforts and Technical Assistance**

State securities regulators reach out to small business issuers in many ways. Most states have web sites that offer access to forms, regulations, frequently asked questions and other useful information. In addition, states provide local companies and entrepreneurs with a great deal of "hands on" assistance in completing registrations or obtaining exemptions for securities offerings. With the closure of several SEC Regional and District offices, states are now often the only local regulatory agency available to assume this role. We meet regularly with local companies that wish to sell securities to explain procedures and assist in compliance with state and federal laws.

States have long realized the important role they play in small business capital formation. With the enactment of NSMIA, states were able to better concentrate their corporate finance resources on small, local offerings. State regulators are small business experts and many states have programs devoted to reaching out to and assisting the small business issuer.

#### **Conclusion**

NASAA continues to pursue initiatives that move toward the goals of assisting small businesses through the capital raising process and enhancing regulatory coordination. We commend the Subcommittee for holding this hearing and look forward to working with you on "going public" issues as well as others impacting the small business community. For more information, contact Deborah Fischione, NASAA's Director of Policy and Office Management at 202-737-0900.